Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Court of Appeal
UPC-CoA-908/2025
UPC-CoA-909/2025
UPC-CoA-918/2025

DECISION

of the Court of Appeal of the Unified Patent Court
issued on 19 August 2026
concerning EP 2 755 901

KEYWORDS

Novelty, inventive step, infringement

APPELLANT IN THE APPEAL PROCEEDINGS 908/2025 AND 909/2025, RESPONDENT IN THE APPEAL PROCEEDINGS 918/2025, CLAIMANT IN THE INFRINGEMENT ACTION AND RESPONDENT IN THE COUNTERCLAIM FOR REVOCATION BEFORE THE COURT OF FIRST INSTANCE)

Hartmann Packaging A/S (formerly Brødrene Hartmann A/S), Gentofte, Denmark

(hereinafter 'Hartmann')

represented by attorney at law Dr. Anton Horn and other attorneys at law from Heuking Kühn Lüer Wojtek, Düsseldorf, Germany and European patent attorney Jan Sørensen, Budde Schou, Copenhagen, Denmark

RESPONDENTS IN THE APPEAL PROCEEDINGS 908/2025 AND 909/2025, APPELLANTS IN THE APPEAL PROCEEDINGS 918/2025, DEFENDANTS IN THE INFRINGEMENT ACTION AND CLAIMANTS IN THE COUNTERCLAIM FOR REVOCATION BEFORE THE COURT OF FIRST INSTANCE)

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2. **Omni-Pac GmbH Verpackungsmittel,** Elsfleth, Germany

(hereinafter 'Omni-Pac')

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PATENT AT ISSUE

EP 2 755 901

PANEL AND DECIDING JUDGES

Panel 2
Rian Kalden, presiding judge and legally qualified judge
Ingeborg Simonsson, legally qualified judge and judge-rapporteur
Patricia Rombach, legally qualified judge
Elisabetta Papa, technically qualified judge

Erwin Wismeth, technically qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of 15 October 2025 the Local Division Düsseldorf in the infringement action UPC_CFI_115/2024 and counterclaim for revocation UPC_CFI_377/2024

LANGUAGE OF THE APPEAL PROCEEDINGS

English

ORAL HEARING

9 July 2026

FACTS OF THE CASE

The parties

1. The parties are active in the industrial packaging industry, providing, amongst other things, packaging for eggs.

The patent at issue

2. Hartmann is the proprietor of EP 2 755 901 (the patent at issue or the patent). The invention pertains to a display and distribution package for eggs. The patent application was filed on 11 September 2012 and claims priority of patent applications of 13 September 2011 and 21 August 2012, EP 11181004 and PCT/IB2012/054229; the mention of the grant of the patent was published on 21 February 2018. It is validated and in force in the following UPC territories: Germany, France and the Netherlands. It has 8 claims, with claims 2-5 being dependent on independent product claim 1, and claims 7 and 8 being dependent on independent method claim 6.

3. The patent's independent claim 1 (claim 1 or the product claim) reads:

> A display and distribution package (2) for eggs, said package being formed of a fibrous material, the package (2) comprising:
>
> - a bottom part (4) comprising a plurality of egg-receiving compartments (8) having non-planar side surfaces so as to match at least partially the outer contours of an egg, the plurality of compartments (8) being arranged in at least two parallel rows,
> - a cover part (6) comprising a top surface (10), a front surface (12), a back surface (14), and two substantially planar end surfaces (18),
> - the cover part (6) being permanently connected to the bottom part (4) by a hinge (16) between the back surface (14) of the cover part (6) and the bottom part (4) so as to allow the cover part (6) to move between an open position and a closed position,
> - said cover part (6) comprising partial ovoid portions (20) extending outwardly from the two substantially planar end surfaces (18), wherein each of the two substantially planar end surfaces (18) apart from the ovoid portions (20) completely spans the entire end surfaces of the cover part (6),

- the bottom part (4) comprising a back side (22), a front side (24), two end sides, and at least one upwardly extending retainment projection (26) extending from the front side (24) of the bottom part (4),
- the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6), characterized in that the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6),
- the nose (28) not extending beyond the front surface (12) of the cover part (6) when the cover part (6) is in its closed position.

4. Independent claim 6 (claim 6 or the method claim) reads:

A method of manufacturing an egg package (2) by suction moulding of a fibrous material, the package (2) comprising:
- a bottom part (4) comprising a plurality of egg receiving compartments (8) having non-planar side surfaces so as to match at least partially the outer contours of an egg, the plurality of compartments (8) being formed in at least two parallel rows,
- a cover part (6) comprising a top surface (10), a front surface (12), a back surface (14), and two end surfaces (18),
- the cover part (6) being permanently connected to the bottom part (4) by a hinge (16) between the back surface (14) of the cover part (6) and the bottom part (4) so as to allow the cover part (6) to move between an open position and a closed position,
- the bottom part (4) comprising a back side (22), a front side (24), two end sides, and an upwardly extending retainment projection (26) extending from the front side (24) of the bottom part (4), the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6), the method being characterised by the following features of the package:
- the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with a co-operating aperture (30) in the front surface (12) of the cover part (6),
- the nose (28) not extending beyond the front surface (12) of the cover part (6) when the cover part (6) is in its closed position, and the method being further characterised by the method steps of:
- placing said retainment projection (26) and co-operating aperture (30) relative to each other during moulding of the egg package (2) in a moulding form, such that deformations in the cover part (6) during manufacture are compensated for,
- removing the egg package (2) from the form, and
- drying said egg package (2) in an oven.

5. An opposition to the grant of the patent was initiated on 20 November 2018, but was withdrawn on 11 April 2019.

The first instance procedure and the impugned decision

6. Hartmann brought an infringement action against Omni-Pac before the Local Division Düsseldorf, alleging infringement of claims 1, 5, 6 and 8 through the ”ComPac” egg packs distributed by Omni-Pac

Ekco GmbH Verpackungsmittel and at least manufactured by Omni-Pac GmbH Verpackungsmittel, the said packs being available for 6, 10 or 12 eggs (hereinafter collectively referred to as the contested embodiments). The contested embodiments are illustrated in the impugned decision at pages 8 and 9.

7. Omni-Pac disputed infringement and requested dismissal of the action.

8. In addition, Omni-Pac lodged a counterclaim for revocation, alleging that (insofar as relevant here):
   - Priority: The application of 13 September 2011 is limited to a display and delivery package for eggs, but not to the method of manufacturing the same. Only claims 1 to 5 can be accorded the priority of the application EP 11181004 of 13 September 2011, whilst claims 6 to 8 can, at most, enjoy the priority of the application PCT/IB 2012/054229 of 21 August 2012.
   - Claim 1 of the patent at issue is invalid for lack of novelty or inventive step in view of prior art EP 1 389 590 A1 (GDM1).
   - Claim 6 is invalid in relation to GDM1 for lack of inventive step; moreover, claim 6 lacks novelty in relation to GDM6.

9. Omni-Pac invoked several other grounds at first instance which have not been pursued on appeal.

10. Hartmann defended the patent as granted and, in the alternative, applied to amend the claims, submitting 4 auxiliary requests.

11. Hartmann alleged infringement also in case the patent would be upheld in accordance with any of the auxiliary requests and amended its requests for an injunction accordingly (pages 6-25 of Reply of 5 September 2024).

12. Omni-Pac refuted admissibility of claims 1 and 6 according to the auxiliary requests, arguing non-compliance with Article 123(2) EPC, and in addition asserted that claims 1 and 6 of auxiliary request 1, as well as claims 1 and 5 of auxiliary requests 2, 3 and 4, are unpatentable in view of prior art invoked against them.

13. The Local Division declared the patent invalid with effect for all Contracting Member States in which it is in force insofar as its subject-matter extends beyond the wording of the patent as upheld in amended form according to auxiliary request 2. The findings of the Local Division included that the subject-matter of claim 1 of the patent could claim priority of EP 11181004 of 13 September 2011, while claim 6 could only claim priority of PCT/IB2012/054229 dated 21 August 2012. Claim 1 as granted was found to lack inventive step in relation to GDM1, as was claim 1 according to auxiliary request 1. However, claim 1 was upheld in amended form according to auxiliary request 2 together with the corresponding dependent claims. By contrast, claim 6 as granted was held valid.

14. The infringement action was dismissed on the merits. The allegation of infringement by equivalence was dismissed as late filed. As an *obiter dictum* the Local Division stated that the equivalence attack would not have been successful.

15. Hartmann was ordered to bear the costs of the infringement action. The Omni-Pac companies were each ordered to bear 40% of the costs of the counterclaim for revocation and Hartmann to bear the remaining 20 %.

16. The value in dispute of the respective actions was set at 500.000 EUR each.

17. Both parties appealed.

18. With the parties' agreement, the language of the appeal proceedings was changed to English on 9 January 2026.

INDICATION OF THE PARTIES' REQUESTS

Infringement UPC-CoA-908/2025

19. With its appeal, Hartmann requests the annulment of the orders set out in paragraphs B and C of the impugned decision and a declaration that the costs of the first instance and appeal proceedings are to be borne by Omni-Pac. Hartmann continues to pursue the claims from the first instance unchanged. Those claims are set out in paragraphs 13 and 14 of the impugned decision and comprise, abbreviated, in relation to both Omni-Pac companies an injunction, an information order, destruction of products, materials and equipment, a recall of the products encompassed by the injunction, that the Omni-Pac companies should be declared jointly and severally liable to compensate Hartmann for all damage suffered and to be suffered as a result of the acts described in the request for an injunction, committed since 21 March 2018; to order the Omni-Pac companies to pay Hartmann the sum of 11,000 EUR as provisional damages, and in the event of any breach of the injunction order, the payment of a penalty of up to 250,000 EUR to the Court, that the decision be declared provisionally enforceable and suggested, should the Court deem it necessary, in accordance with R. 352 RoP, that provisional enforceability be made conditional upon the provision of security.

20. Omni-Pac requests that the appeal be dismissed.

Counterclaim for revocation UPC-CoA-909/2025

21. With its appeal, Hartmann requests the annulment of the orders set out in paragraphs A and C of the impugned decision and a declaration that the costs of the first instance and appeal proceedings be borne by the Omni-Pac companies.

22. Omni-Pac requests the Court of Appeal to dismiss Hartmann's appeal regarding the counterclaim for revocation in its entirety, and order Hartmann to bear the costs of the appeal proceedings.

Counterclaim for revocation UPC-CoA-918/2025

23. With its appeal, Omni-Pac requests that the decision set out in paragraph A of the impugned decision, declaring the patent partially invalid, be set aside and replaced by a decision declaring the patent invalid in its entirety; and that the costs of the proceedings at first instance and of the appeal proceedings be borne by Hartmann.

24. Hartmann requests the Court of Appeal to dismiss Omni-Pac's appeal and maintains the auxiliary requests. In the event that the Court of Appeal finds that either claim 1 or 6 is not valid, the auxiliary requests shall apply only to that claim (as determined by the Court of First Instance, para. 204 and 205).

GROUNDS FOR THE DECISION

Procedural issues

- *The equivalence argument*

25. Hartmann clarified at the oral hearing that it does not pursue the equivalence argument on appeal.

- *Whether arguments of Hartmann in the infringement appeal are admissible*

26. Omni-Pac has objected against Hartmann's argument in the infringement appeal 908/2025 that the lifting of a flap could be integrated into the same work step as the pivoting movement (SoGA, paras. 64 et seq.). Omni-Pac takes the view that this submission is new and therefore late-filed and inadmissible. According to Omni-Pac, the underlying factual premise was undisputed at first instance (the impugned decision at para. 93).

27. Omni-Pac's objection is unsuccessful. Hartmann has challenged the Local Division's claim construction in relation to feature 2.2. The Court of Appeal may disregard "requests, facts and evidence" which were not submitted by a party during the proceedings before the Court of First Instance. This wording makes it clear that the rule does not apply to legal arguments. R. 222.2 RoP therefore does not prevent a party from submitting a new legal argument on appeal, provided that the argument is based on facts and evidence submitted to the Court of First Instance (CoA, 21 November 2024, UPC_CoA_511/2024, *Meril v Edwards*, para. 12). The interpretation of a patent claim is a matter of law (CoA, 30 April 2025, UPC_CoA_768/2024, *Insulet v EOFlow*, para. 37; 19 June 2025, UPC_CoA_402/2024, para. 18).

- *Whether Hartmann's new facts and evidence in the counterclaim appeal (UPC-CoA-909/2025) are admissible*

28. Hartmann, in its appeal against the decision on partial revocation of the patent at issue, made further submissions about the different manufacturing methods and processes for pulp and plastic and on the fact that the choice of materials is inventive. On appeal, Hartmann submitted Annexes 31 to 35. According to Hartmann, the statements are not new but are merely a specification of its previous submissions to the Court of First Instance. However, should the Court consider the specifications to be new, Hartmann asks admittance pursuant to R. 222.2 RoP. Hartmann states that the Court of First Instance introduced the choice of material as a decisive point in a way that was not reasonably foreseeable, since none of the parties had argued that the choice between cellulose and plastic was routine and not inventive. Hartmann adds that the relevance of these specifications is high and their admission does not disadvantage Omni-Pac. None of the documents were available to Hartmann during the proceedings of first instance, but were received only after the court hearing of first instance or even later, as a result of a search initiated in response to the reasons in the impugned decision.

29. When exercising discretion under R. 222.2 RoP, the Court shall in particular take into account: (a) whether a party seeking to lodge new submissions is able to justify that the new submissions could not reasonably have been made during proceedings before the Court of First Instance; (b) the relevance of

the new submissions for the decision on the appeal; (c) the position of the other party regarding the lodging of the new submissions.

30. Omni-Pac has objected against the admission of new facts and evidence. Omni-Pac points out that in addition to the newly filed annexes, photos in the Statement of grounds of appeal are new as well, as are statements concerning angle definitions, conicities and "frequent jamming".

31. The Court of Appeal agrees with Omni-Pac that there was a discussion at first instance about whether the skilled person (m/f – hereinafter referred to as 'it') would consider a fibrous material for the packaging according to GDM1. This can be seen in the Counterclaim for revocation at paragraphs 114–117. The discussion was picked up by Hartmann as demonstrated by the Defense to the counterclaim for revocation, paragraphs 157-176. It was continued by Omni-Pac in the Reply, paragraphs 45-46, and revisited by Hartmann in the Rejoinder to the Reply, paragraph 95 and the accompanying expert opinion. – As a result, the significance of the choice of material in relation to GDM1 was not surprising.

32. The new evidence has low relevance for the decision on appeal. Annex 31 is a product data sheet. Allegedly it comes from Omni-Pac, concerns the contested embodiment and warns that any use outside the intended purpose is the responsibility of the user. Annex 32 is a web article from 2015 on the second life of egg cartons, essentially addressing egg cartons (in particular plastic ones) as children's toys. Annex 33 is a patent specification (EP 2 981 479 B1) allegedly corresponding to the "technical teaching" of the 2015 web article of Annex 32. Annex 34 is a web page list of advantages and disadvantages of molded fiber egg cartons. Annex 35 is a LinkedIn post made by Omni-Pac's representative, allegedly implying that the representative does not see any problems with the novelty of the patented invention, and sees no indication that the material plays a role in the classification of validity.

33. As regards Annexes 31 to 34, Hartmann could have made inquiries at an earlier stage to obtain the evidence.

34. In summary, Hartmann has not been able to justify that the new submissions could not reasonably have been made during proceedings before the Court of First Instance. The relevance of the new submissions for the decision on the appeal is low and their admission would at least be to some detriment for Omni-Pac. Therefore, Annexes 31 to 34 are not admitted in the appeal proceedings.

- *Omni-Pac invoked GDM1 against claim 6 for lack of inventive step at first instance*

35. Omni-Pac rightly points out in its own appeal that it invoked GDM1 at first instance against claim 6 also for lack of inventive step (see paras. 220-225 of the Counterclaim of 5 July 2024). Although this is not in the impugned decision, it can be seen from Omni-Pac's submissions. This ground will be addressed by the Court of Appeal.

- *Certain blanket references to prior art invoked at first instance made by Omni-Pac on appeal (918/2025)*

36. In its appeal, Omni-Pac, has relied on prior art GDM1 and GDM6, but in addition made unspecific general references to other pieces of prior art. Omni-Pac has initially stated (page 1 SoGA) that the

appeal contests the impugned decision solely to the extent that the request of fully revoking the patent at issue has not been granted in full and hence the patent has only been partially revoked. Other findings in the appealed decision – especially regarding the claim interpretation – are not contested. However, Omni-Pac has added (page 10 SoGA) that the discussion of patentability may be restricted to the prior art documents GDM1 and GDM6 "for now as the remaining prior art documents undisputedly rely on flexible locking flaps as part of the locking mechanism, which – according to the first instance decision – concern a different principle (cf. par. 25). However, in case [Hartmann] challenges said claim interpretation within the present appeal proceedings or within his own appeal, the question of patentability will also need to be assessed in view of the other prior art documents". Furthermore, Omni-Pac states (page 10 SoGA) about the conclusion made by the Local Division on priority "In context of the present appeal and as long as the claim interpretation set out by the Court of First Instance is maintained, this may be assumed to be correct."

37. General references to submissions made at first instance is only sufficient if and to the extent that the impugned decision does not address them (see order of 14 February 2025, UPC_CoA_382/2024, *Abbott vs Sibio et al*, para. 17). The Local Division made the following assessments:
    - Novelty: none of the novelty attacks were successful (paras. 116-149, addressing claim 1 in relation to GDM1; paras. 130-142, addressing claim 1 in relation to GMD2; para. 143, addressing claim 1 in relation to GDM6; paras. 144-149, addressing claim 6 in relation to GDM6).
    - Inventive step: Claim 1 lacks inventive step in relation to GDM1 (paras. 159-166). Claim 6 is inventive in relation to a combination of GMD3 and GDM4 (para. 168); in relation to GDM5 (paras. 169-171) and when combining GDM5 with GDM4 (para. 172). Claim 1 according to auxiliary request 1 lacks inventive step in relation to GMD1 (paras. 178-181), but claim 1 according to auxiliary request 2 is inventive in relation to GDM1 (paras. 185-188), in relation to GDM3 in combination with GDM 4 (paras. 189-199), and in relation to GDM3 in combination with GDM5 (para. 200).

38. If Omni-Pac wanted to rely on other pieces of prior art (claim 6 in relation to GDM3, GDM4 and GDM 5, claim 1 according to auxiliary request 2 in relation to GDM3 in combination with GDM 4, and in relation to GDM3 in combination with GDM5) it would have had to say so and, insofar as those grounds have been assessed by the Local Division, explain why those assessments are wrong.

Priority

39. According to the findings of the Local Division (paras. 111-113), the patent at issue successfully claims the priority of EP 11181004 of 13 September 2011 for the subject-matter of claim 1, and of PCT/IB2012/054229 of 21 August 2012 for the subject-matter of claim 6. On appeal, Omni-Pac only questioned the Local Division's assessment on a condition that has not been fulfilled. More precisely, Omni-Pac stated in the counterclaim appeal, without pursuing any substantive arguments, "In context of the present appeal and as long as the claim interpretation set out by the Court of First Instance is maintained, this [the first instance's priority assessment, Court of Appeal's remark] may be assumed to be correct".

Claim 1 and the patent description – background to the invention and the object of the invention

40. In the patent specification, it is set out in the description how packages for packing and transporting eggs are known in a variety of forms. In those packages that comprise a hingedly connected bottom and cover part, the vertical front side of the bottom part is often provided with a flexible flap comprising a number of protrusions for engagement with correspondingly located and shaped holes in the cover part, thereby locking the bottom and cover parts together in the closed state of the package. A package of this kind suffers from various disadvantages. In the closed position, the front face of the package will be subdivided into an upper part and a lower part and as the lower part is typically formed to be able to accommodate and support the articles contained within the package, it is only the upper part which can be given a planar shape that permits the application of text and pictures describing the contents of the package. In use in a store, such packages will often be stacked in a sales rack, and hence it is only the vertical front side, which is visible to the customer ([0002], ln. 10-11 and 20-36).

41. The description goes on to refer to prior art EP 1 373 100 (here, GDM2), concluding that a problem with the GDM2 egg package is that the closing and locking mechanism is provided by a traditional locking flap having a protrusion, which extends through an aperture in the front side of the cover part, thus, reducing the available place for a label ([0003] ln. 45-50).

42. Next, reference is made to prior art EP 1 923 332 (here, GDM3). It is stated that the preambles of independent claims 1 and 6 are based on GDM3 and that it discloses a similar egg package as the one in GDM2, although with two locking mechanisms instead of one. The egg package disclosed in GDM3 also has a problem with the closing and locking mechanism, because it is provided with a traditional locking flap having a protrusion, which extends through an aperture in the front side of the cover part, thus, reducing the available place for a label ([0004] column 1, ln. 54-58, column 2, ln. 1-2).

43. Thus, in the prior art egg packages it has only been possible to place a label on the top surface of the cover part, which often is not visible, when the egg packages are stacked in a sales rack. There has thus always been a conflict between having a large surface for the placement of a label and at the same time having a reliable closing and locking mechanism, i.e. a large area for a label without compromising the reliability of the locking mechanism. Additionally, a closure flap as known from GDM2 is an element that increases the cost of manufacture and transport of the egg packages ([0005]).

44. When the invention is summarised in paragraphs [0006 – 0009], four objectives are identified:
    - to provide an egg package, which due to its form provides [a] clear, visible information about the contents of the unit and at the same time offers good opportunities for providing graphical and/or pictorial information on large surfaces of the unit;
    - to provide an egg package, which may be reliably closed and locked in a substantially error free manner by a machine;
    - to provide a packaging unit which can be produced as one integrated unit for instance by suction moulding;
    - to provide an egg package - without the provision of a traditional locking flap - which may be reliably closed and locked in a substantially error free manner by a machine.

45. The above-mentioned and other objects are explained to be fulfilled by an egg-package according to claim 1 formed of fibrous material ([0010], ln. 35-37), and by a method of producing an egg package by suction moulding of a fibrous material according to independent claim 6.

The person skilled in the art

46. According to the Local Division, the person skilled in the art is a graduate engineer or master of packaging technology with a degree from a university of applied sciences and with several years of professional experience in the development and design of packaging technology with special knowledge in the field of pulp-based moulded fibre packaging.

47. The Court of Appeal will proceed from the same definition. The definition of the skilled person is not contested on appeal.

Claim construction

48. The principles applicable to claim construction have been set out by this Court in its final order in UPC_CoA_335/2023 (*NanoString v 10x Genomics*). The patent claim is not only the starting point but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. The patent claim is to be interpreted from the point of view of a person skilled in the art. In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties.

Claim 1

49. The Court of Appeal will proceed from the same feature breakdown for claim 1 as did the Local Division (this feature breakdown is not presented in the same order as in the granted claim. Features 2.2.1 and 4 are those in the characterizing part of claim 1 as granted):

    0. A display and distribution package (2) for eggs,
        1. said package being formed of a fibrous material, the package (2) comprising:
        2. a bottom part (4)
            2.1. comprising a plurality of egg-receiving compartments (8)
                2.1.1. having non-planar side surfaces so as to match at least partially the outer contours of an egg,
                2.1.2. the plurality of compartments (8) being arranged in at least two parallel rows,
            2.2. the bottom part (4) comprising a back side (22), a front side (24), two end sides, and at least one upwardly extending retainment projection (26) extending from the front side (24) of the bottom part (4),
                2.2.1. the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6),
        3. a cover part (6)
            3.1. comprising a top surface (10), a front surface (12), a back surface (14), and two substantially planar end surfaces (18),

3.2. the cover part (6) being permanently connected to the bottom part (4) by a hinge (16) between the back surface (14) of the cover part (6) and the bottom part (4) so as to allow the cover part (6) to move between an open position and a closed position,

3.3. said cover part (6) comprising partial ovoid portions (20) extending outwardly from the two substantially planar end surfaces (18),

3.3.1. wherein each of the two substantially planar end surfaces (18) apart from the ovoid portions (20) completely spans the entire end surfaces of the cover part (6),

4. the nose (28) not extending beyond the front surface (12) of the cover part (6) when the cover part (6) is in its closed position.

5. the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6)

50. For claim 1, the Local Division construed the claims as follows (in summary).

- The fibrous material in features 0, 1, 2 and 3 is understood by the skilled person to be cellulose of wood fibres, and it knows that the fibres are usually obtained from waste paper and cardboard.
- Features 2, 2.2 and 2.1.1 are fulfilled regardless of whether the outer or inner shape of the egg-receiving compartments are considered.
- For feature group 3, it is already clear from the wording of the claim that the end surfaces can also comprise non-planar regions.
- Feature 3.3 additionally requires that the cover part comprises partially ovoid portions (20) which extend outwards from the two substantially planar end surfaces. Partial ovoid portions are understood by the skilled person as sections which have a shape which enables the observer to make a clear association with the shape of an egg, without the shape necessarily corresponding exactly to the shape of an egg. Even polygonal or angular rotational bodies are not fundamentally excluded.
- Feature group 3.3 is to be interpreted broadly: Since feature 3.3.1 only requires ”substantially planar end surfaces”, the end surfaces need not be fully flat. Rather, it is clear to the person skilled in the art in view of Figure 14 that part of the end surfaces can also be convex.
- Feature 3.2, the cover part (6) being permanently connected to the bottom part (4) by a hinge ((16)) between the back surface of the cover part and the bottom part, this permanent connection means that the cover part can be moved between an open and a closed position.
- As to feature 2.2, claim 1 does not expressly state whether this retaining projection is flexible or rigid. The person skilled in the art concludes that the patent at issue understands the term ”retaining projection” as distinct from the flexible closure flaps known in the prior art: it is a component which reduces material costs in order to reduce production costs by saving the base area of the closure flaps. As a result, the retaining projection is arranged directly on the front of the base part and is so rigid that the cover part can slide over the lug extending outwards and downwards on the retaining projection when closing and thus enable the locking engagement required in feature 2.2.1 when closed. As a result, the egg pack can be closed by the packaging machine without errors and reliably, in a single operation, by swivelling the cover part (see [0013], [0023]). This is confirmed by the overall structure of claim 1.
- Features 4 and 5 describe the design of the cover part with a label. Feature 4 specifies that the nose does not extend beyond the front surface of the cover part when the cover part is in its closed position. The nose must therefore be designed in the packaging unit in such a way that it does not

protrude beyond the front surface, but nevertheless ensures a reliable closure together with the opening. The technical means by which this effect is achieved is left open.

- Feature 5 - the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6) - is unspecific as to how large the substantial part of the front surface should be, and as to how far the label should extend over the front surface of the cover part. A design in which the entire top surface and only part of the front surface of the cover part is covered with a label can therefore also fall within the scope of protection of claim 1.

- *Feature 2.2 of claim 1*

51. Hartmann contests the interpretation given to feature 2.2 by the Local Division. According to feature 2.2 of claim 1, the bottom part (4) comprises a back side (22), a front side (24), two end sides, and at least one upwardly extending retainment projection (26) extending from the front side (24) of the bottom part (4).

52. The inventive concept of claim 1 lies in providing an egg package that solves the conflict between having a large surface for the placement of a label and at the same time have a reliable closing and locking mechanism ([0005] ln. 7-9), while avoiding the disadvantages of a flexible flap known in the prior art.

53. The Court of Appeal finds that feature 2.2 will be understood by the skilled person to exclude egg packages with a traditional locking flap. The findings of the Court of Appeal differ somewhat from the Local Division's, which focussed on rigidity of the retaining projection, distinguishing it from the flexible closure flaps known in the prior art. However, there is no disclosure in the patent of a specific or general rigidity of the retainment projection, and no warnings against flexible solutions. Neither is a specific rigidity (or flexibility) implied for the skilled person. An "increased rigidity" is mentioned at paragraph [0075] in conjunction with the embodiment including the (unclaimed) raised pillow posts. Moreover, a slight resilience of the fibrous material is mentioned at paragraphs [0025], [0035] and [0055], but this relates to the embodiments comprising a tongue (40) according to dependent claims 5 and 8. These passages of the disclosure relate to ancillary features not included in claim 1.

54. Claim features must be interpreted in the light of the claim as a whole (UPC Court of Appeal, 13 May 2024, UPC_CoA_1/2024, *VusionGroup v Hanshow*, para. 29). The fact that a patent specification distinguishes itself from the prior art specifically described therein may be relevant to the interpretation of the patent claim, subject to the condition that the patent specification sets out with sufficient clarity what the distinction relates to and by means of which feature the patent distinguishes itself from that prior art embodiment (see decision of 27 May 2026, UPC_CoA_622/2025, *Hefei vs Grundfos*, para. 53). Bearing this in mind, the Court of Appeal explores the meaning, in the sense of the patent, of on the one hand the upwardly extending retainment projection and on the other hand traditional locking flaps. To begin, one embodiment of the claimed egg package is illustrated in Figure 2:

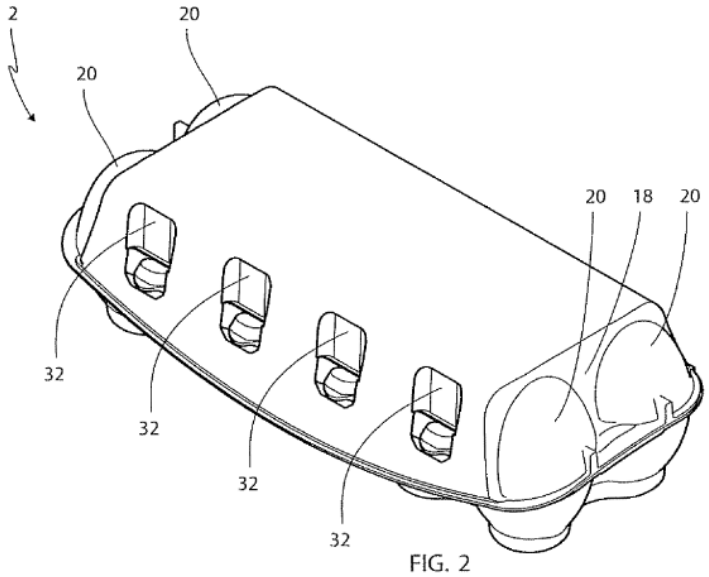


FIG. 2

55. The package (globally denoted by 2) is made of a fibrous material, in particular pulp ([0028], [0044]), and comprises a cover part (6) permanently hinged to a bottom part (4) at respective back surfaces (14, 22). The bottom part includes ten egg-receiving compartments (8) arranged in two parallel rows. The cover part has a top surface (10) and a front surface (12) both covered by a label (42, shown in Figure 7). The cover part also has lateral end surfaces, each including a flat portion (18) and two ovoid portions (20) projecting outwardly with respect to the flat portion, which otherwise completely spans the entire end surface. ([0028]-[0030]). The upwardly extending retainment projection (26) is not noted on this drawing but is introduced in Figure 5.

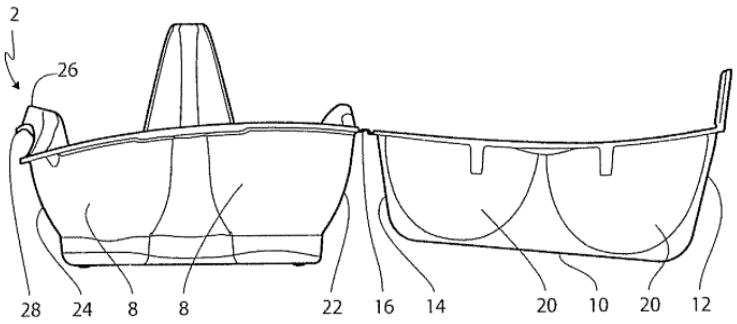


FIG. 5

Figure 5 (above) shows an end-view of an egg package (2) in the open position. The bottom part (4) comprises a back side (22), and a front side (24). It comprises further egg-receiving compartment (8). An upwardly extending retainment projection (26) is extending from the front side (24) of the bottom part (4). The retainment projection (26) has a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6). The nose (28) is configured for not extending beyond the front surface (12) when the cover part (6) is in its closed position ([0028], [0030]). The cover part (6) is permanently connected to the bottom part (4) by a hinge (16). It comprises a top surface (10), a front surface (12), and a back surface (14) ([0029]). It has partial ovoid portions (20) extending outwardly from two substantially planar end surfaces (18) ([0030]).

56. In this view an upwardly extending retainment projection (26) can be seen. The skilled person will appreciate that it has an upright orientation independently from the open or closed configuration of the package. Hartmann argues in vain that the skilled person assumes that the upwardly extending retainment projection (26) can also be designed as a flexible locking flap. There is no support in the patent specification for a design of the upwardly extending retainment projection as a flexible locking flap. The patent's solution is distinct from flexible locking flaps, as evidenced by the references to prior art and the patent description.

57. The problems with prior art egg packages as set out in the description has been explained above (paras. 40-43). When GDM2 and GDM3 are consulted, two aspects emerge. The first is the protrusion which extends through an aperture in the front side of the cover part (protruding noses). This can be seen in Figure 5, reference no. (7) of GDM2 and Figure 1, reference no. (12) of GDM3.

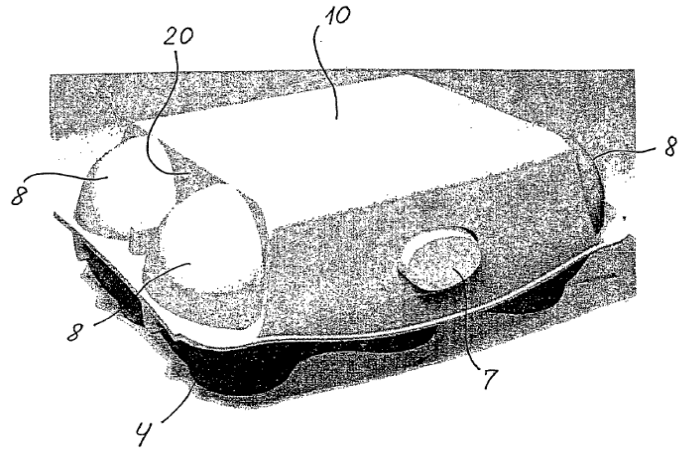


Fig. 5

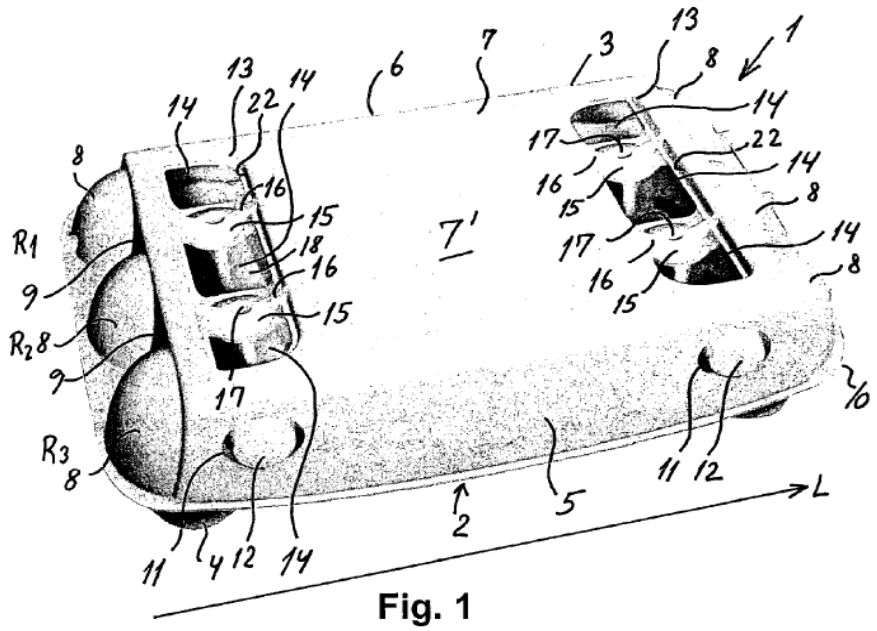


Fig. 1

58. The second aspect is the presence of traditional locking flaps in the two pieces of prior art. A flexible flap (6) is illustrated in green in GDM2 (the coloring comes from page 24 of the impugned decision):

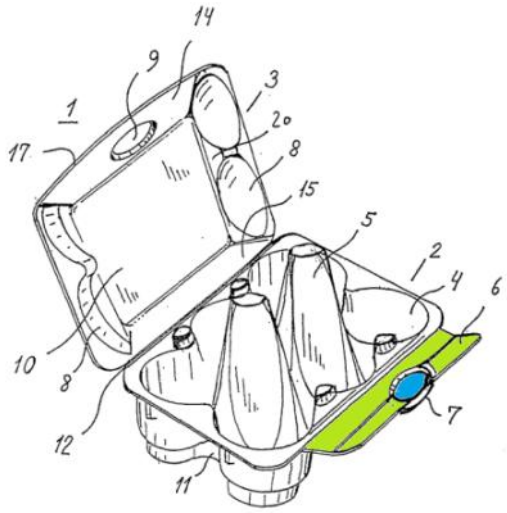


Fig. 1

59. Moving to GDM3, figure 6 is a perspective view of the embodiment of the invention shown in figure 1 shown in an open state and showing internal support structures and details of the window portions. Although no specific numbered reference is made, a closure flap with a hinged connection is visible (arrows included, from page 24 of the impugned decision):

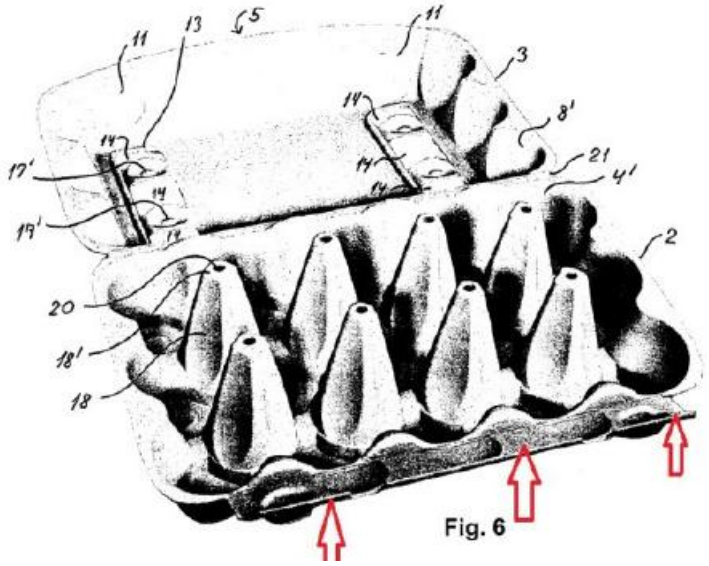


Fig. 6

60. The patent's upwardly extending retainment projection has a nose. This nose is part of the said projection, while on the other hand the protrusions in prior art sit on a flap that can be flexed. This was recognised by Hartmann at the oral hearing. Hartmann explained that in GDM2 the prominent button needed to be pressed to release the button from the aperture and lift the cover part, which required the flap to be moveable in inward direction and therefore had to be flexible, , whereas in the "next generation" egg packages, the inner part does not move, but instead the front side of the cover part is moved outwards and then lifted.

61. In the patent, the noses are projecting downwardly and outwardly (feature 2.2.1). The cooperating apertures on the cover part can slide over the noses during closing of the egg package and engage them in a locking manner, because the noses will simply work as hooks that hook onto a lower edge of

the aperture. This way a simple – yet effective – way of providing reliable locking means on the cover part is achieved, which furthermore is easy to manufacture ([0013] column 4, ln. 3-9, [0023] ln. 43-50).

62. The solution offered by claim 1 thus solves the object of providing an egg package which may be reliably closed and locked in a substantially error free manner by a machine ([0007]), without the provision of a traditional locking flap ([0009] ln. 31-32) and thus does not have the disadvantage of the associated increased cost of manufacture and transport of the egg packages ([0005] ln. 11–13).

63. As explained, an object of the invention is to provide an egg package, which due to its form provides a clear, visible information about the contents of the unit and at the same time offers good opportunities for providing graphical and/or pictorial information on large surfaces of the unit (para. [0006]). Since the noses do not extend beyond the front surface of the cover part when the cover part is in its closed position, it is possible to equip the cover part with a label covering the top surface and the entire front surface of the cover part ([0014] ln. 13-17). But Hartmann is not right in arguing that it is the (sole) objective of the invention that disruptive elements such as fastening tabs/noses and openings should be able to be simply covered with a label. As recognised by Hartmann itself, and as follows from the objectives stated in the patent (see para. 40-44 above) the aim of maximising the label area should be achieved without compromising the reliability of the locking mechanism. This is confirmed by the description.

64. The closing and locking of the egg package according to the invention, in one operation, by pivoting the cover part in relation to the hinge, is explained as facilitating a reliable and stable locking function by simple mechanical closing means ([0013] ln. 46-55 and [0023] first sentence and ln. 34-35). It is therefore an important advantage that the package can be closed and locked in an error free and reliable manner by the packaging machinery ([0013] column 1, ln. 57-58, column 2, ln. 1-2). Moreover, the invention is distinguished from prior art by reference to deformation during the manufacturing process, usually not large enough to cause problems in relation to the reliability of the traditional egg packages which are equipped with a large locking flap ([0022] column 6, ln. 10-11), but to be compensated for according to the method step of feature 6.3 of the invention so that the egg package can be locked and closed in a substantially error free manner by the existing packaging machinery ([0022] column 6, ln. 20-27). In this context it is mentioned that since egg packages are machine handled at a tremendous speed in an egg packaging facility, the facilitation of a reliable and error free locking of them is of critical importance ([0022], column 6, ln. 18-19). The packing machinery needs only one mechanical operation ([0023], ln. 37). The Court of Appeal takes from this that the egg package in accordance with claim 1 which may be produced in accordance with claim 6 is intended not to have a flexible flap known in the prior art.

65. In conjunction with the above, Omni-Pac has also convincingly argued that the concept of one mechanical operation and a single pivoting movement as described in para. [0013] ln. 54/55 and [0025] ln. 9, is incompatible with the multi-step handling of a package with a flap because a traditional flexible flap is produced to extend horizontally and needs to be put upright first, before the cover can be pivoted over the nose. With a flexible flap, additional mechanical steps are required, whereas the patent in suit aims at a closure that is achieved in one operation by pivoting the cover part alone. This was acknowledged by the Local Division (paras. 92-93), and the Local Division stated that the arguments remained undisputed at the oral hearing.

66. Hartmann's argument that the description of the patent in suit does not describe the entire process from the manufacture of the unit to the sale-ready product filled with eggs and locked, and does not exclude the possibility that the flap is folded in upright position in a preceding step, cannot be accepted as the skilled person's understanding. It will find in para. [0022] and [0023], as well as [0013] and [0025] confirmation that, in accordance with the patent's aim, a flexible flap is avoided, so as to obtain easy and reliable locking in one step, avoiding additional manufacturing costs.

67. In summary, the skilled person will understand the "at least one upwardly extending retainment projection extending from the front side of the bottom part" as distinct from hinged flexible flaps with protrusions as known in the prior art, so that feature 2.2 excludes the provision of a traditional locking flap). This is consistent with feature 2.2.1 of claim 1, according to which the upwardly extending retainment projection (26) has a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6) (see para. 64 above). The interpretation gains further support from the facts that the patent does not use the word flap, except when prior art is mentioned, and that none of the drawings demonstrate a locking flap, instead they demonstrate retainment projections (esp. Figure 5). While embodiments shall not be used to limit the scope of protection, this reading is consistent with the claim language, the description and the drawings, seen against the objectives of the patent and the inventive concept.

- *The construction of feature 3.3 can be left open*

68. Omni-Pac has additionally disputed the Local Division's construction of feature 3.3, taking the view that there must be a genuinely ovoid geometry, at least in part. This distinction had no impact as such on the outcome at first instance and will have no impact on the present decision. The construction of feature 3.3 can be left open.

Claim 6

69. The Court of Appeal will use the same feature breakdown for claim 6 as the Local Division did (not presented in the same order as in the claim, features 6.1.2.1, 6.1.2.2, 6.3, 6.4 and 6.5 are those in the characterizing part of claim 6 as granted; the initial digit "6." is added by the CoA for better clarity in distinguishing the features from those of claim 1):

6.0. A method of manufacturing an egg package (2) by suction moulding of a fibrous material, the package (2) comprising:
6.1. a bottom part (4)
6.1.1. comprising a plurality of egg-receiving compartments (8)
6.1.1.1. having non-planar side surfaces so as to match at least partially the outer contours of an egg,
6.1.1.2. the plurality of compartments (8) being formed in at least two parallel rows,
6.1.2. the bottom part (4) comprising a back side (22), a front side (24), two end sides, and an upwardly extending retainment projection (26) extending from the front side (24) of the bottom part (4),
6.1.2.1. the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with a co-operating aperture (30) in the front surface (12) of the cover part (6),

6.1.2.2. the nose (28) not extending beyond the front surface (12) of the cover part (6) when the cover part (6) is in its closed position,

6.2. a cover part (6)
- 6.2.1. comprising a top surface (10), a front surface (12), a back surface (14), and two end surfaces (18),
- 6.2.2. the cover part (6) being permanently connected to the bottom part (4) by a hinge (16) between the back surface (14) of the cover part (6) and the bottom part (4) so as to allow the cover part (6) to move between an open position and a closed position,
- 6.2.3. the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6),

the method being further characterised by the method steps of:

6.3. placing said retainment projection (26) and co-operating aperture (30) relative to each other during moulding of the egg package (2) in a moulding form, such that deformations in the cover part (6) during manufacture are compensated for,

6.4. removing the egg package (2) from the form, and

6.5. drying said egg package (2) in an oven.

70. The Local Division construed the claim as follows (in summary).
- The features correspond in many respects to those of patent claim 1. The device features 6.1, 6.1.1, 6.1.1.1, 6.1.1.2, 6.2, 6.2.1, 6.2.2, 6.1.2, 6.2.3, 6.1.2.1 and 6.1.2.2 are therefore subject to the same assessment as those of patent claim 1. On the other hand, the device features 3.3 and 3.3.1 of claim 1 have not been included in claim 6. Accordingly, the claimed method can also be used to produce egg packaging with any end surfaces without these having to have a special shape.
- Feature 6.3: claim 6 leaves open the technical means by which placement relative to one another is to be achieved, and the description does not specify this either. Feature 6.3 is therefore relatively broad. Nevertheless, it is important to bear in mind that this does not only require the egg packaging to be produced in a mould. Rather, what is required is (i) the holding protrusion and the co-operating opening must be positioned during the moulding process, (ii) in such a way that the deformations in the cover part are compensated for during manufacture.

- *Feature 6.1.2.1*

71. Feature 6.1.2.1 is interpreted the same was as feature 2.2.1 of claim 1 by the Court of Appeal, the wording being identical.

- *Feature 6.3*

72. Feature 6.3 reads: placing said retainment projection (26) and co-operating aperture (30) relative to each other during moulding of the egg package (2) in a moulding form, such that deformations in the cover part (6) during manufacture are compensated for.

73. When questioned at the oral hearing, Hartmann took the position that paragraph [0022] of the description is decisive for interpreting feature 6.3. In Hartmann's view, feature 6.3 does not convey more than that the patented method requires diligence and exactness.

74. The interpretation of feature 2.2 of claim 1 set out above indeed calls for a more precise manufacturing method. Omni-Pac is right to say that deformations are usually not large enough to cause problems if the egg package has a flap. However, absent the counterforce created by a locking flap that moves from a horizontal position out of moulding to a vertical position for closing, it must be ensured in manufacture that each nose that extends downwardly and outwardly from the upwardly extending retainment projection can engage in locking with the co-operating aperture in the front surface of the cover part.

75. When paragraph [0022] is consulted, the skilled person learns that an egg package formed by suction moulding of a fibrous material would possess some degree of stiffness in the bottom part, because the bottom part comprises the egg receiving compartments, whereas the cover part comprises larger substantially flat surfaces. These larger surfaces are less stiff and therefore also more prone to deformation during the manufacturing process, i.e. after they are removed from the mould and dried in the oven. These deformations are usually not large enough to cause problems in relation to the reliability of the traditional egg packages, which are equipped with a large locking flap. However, since the nose in the egg package manufactured according to the inventive method does not extend beyond the front surface of the cover part when the cover part is in its closed position, even very small deformations in the cover part may lead to an unreliable locking of the egg package because the nose does not reach into the aperture. Since egg packages are machine handled at a tremendous speed in an egg packaging facility, the facilitation of a reliable and error free locking of them is of critical importance. Thus, by placing the retainment projection and co-operating aperture relative to each other during moulding of the egg package in a moulding form, such that the above mentioned deformations in the cover part during manufacture are compensated for, it is achieved that the egg package can be locked and closed in a substantially error free manner by the existing packaging machinery being used in handling prior art packages.

76. The teaching that can be derived is that deformations will occur during the manufacturing process and should be compensated for by placing the retainment projection and co-operating aperture relative to each other during moulding of the egg package in a moulding form. Failing any further guidance on how to achieve this, the skilled person will have to rely on common general knowledge and a certain amount of testing.

77. There is a dispute about whether the manufacture of a one-piece egg carton by means of the suction moulding was part of general technical knowledge as of priority date 1 and priority date 2.

78. Omni-Pac has referred to FW2, FW3 and FW4 here. FW2 is a Wikipedia article about fibre moulded parts. Among other things it mentions that moulded fibre products resemble egg cartons in appearance. FW3 is a book published in 2005 entitled “Paper and Paperboard Packaging Technology”, edited by Mark J. Kirwan, discussing all the main types of packaging based on paper and paperboard (see Preface). Chapter 14 has the heading “Moulded pulp packaging” and mentions egg trays. Suction moulding is explained on page 418: “pulp is pumped into a perforated mould where water is removed by vacuum forming. The moulded item is then dried”, again mentioning egg boxes. FW4 is a conference paper by Renee Wever and Diana Twede from 2007 entitled “The History of Molded Fibre Packaging; A 20th Century Pulp Story”.

79. The Court of Appeal finds, especially from FW3, that the production of egg packages by suction moulding was part of the common general knowledge at both priority dates.

Inventive step, principles

80. The approach taken by the Unified Patent Court when establishing inventive step is as follows (see decision of 25 November 2025, UPC_CoA_528/2024 and UPC_CoA_529/2024, *Amgen vs Sanofi and Regeneron*, see also *Meril vs Edwards* issued on the same day).

81. 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, 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 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 patent understands is (are) achieved with the claimed invention.

82. In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution.

83. 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.

84. The relevant field of technology is the 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.

85. 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.

86. 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.

The objective problem

87. The Court of Appeal will proceed from the problem as set out in the patent description; to provide an egg package, which due to its form provides a clear, visible information about its contents and at the same time offers good opportunities for providing graphical and/or pictorial information on a large

surfaces of the unit ([0006]), which can be produced as one integrated unit for instance by suction moulding ([0008]), and which may be reliably closed and locked in a substantially error free way by a machine, without the provision of a traditional locking flap ([0007 and 0009]).

88. The part of the problem set out in paragraph [0006] is solved by feature 4 of claim 1 (and feature 6.1.2.2. of claim 6), in that the nose(s) of the bottom part engaging respective aperture(s) of the cover part does not extend beyond the front surface of this latter part when the package is in its closed configuration. In this way, it is possible to equip the cover part with a label covering the top surface and a substantial part of the front surface according to feature 5 of claim 1 and 6.2.3. of claim 6 ([0014]).

89. Moreover, the ovoid-shaped portions according to feature 3.3 of claim 1 provide said clear, visible information about the package content through its form. Therefore, according to the patent, the claimed locking mechanism according to features 2.2 and 2.2.1 (6.1.2. and 6.1.2.1.) and the ovoid portions according to feature 3.3 of claim 1 provide a synergetic effect by obtaining an egg package, which due to its form provides a clear, visible information about the contents of the unit and at the same time offers good opportunities for providing graphical and/or pictorial information on remaining surfaces of the cover part ([0015]). Features 3.3, 4 and 5 of claim 1 are also indicated as making the package more appealing and easy recognizable for the consumer ([0016]).

90. The part of the problem set out in paragraphs [0007] and [0009] is overcome by the patent in using the retainment projection of feature 2.2.1; the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6). “Since, the nose(s) are projecting downwardly and outwardly, the cooperating aperture(s) on the cover part can slide over the nose(s) during closing of the egg package and engage it in a locking manner, because the nose will simply work as a hook that hooks onto a lower edge of the aperture. This is a simple - yet effective way - of providing a reliable locking means on the cover part is achieved, which furthermore is easy to manufacture” ([0013], column 4, ln. 2-10; [0023], ln. 37-52).

91. The production of such a packaging unit which can be produced as one integrated unit for instance by suction moulding ([0008]) will be achieved by features 6.0 (suction moulding of a fibrous material), 6.3, 6.4 and 6.5, i.e. the method steps of: placing said retainment projection and co-operating aperture relative to each other during moulding of the egg package in a moulding form, such that deformations in the cover part during manufacture are compensated for, removing the egg package from the form, and drying said egg package in an oven.

Claim 1 as granted, inventive step in relation to GDM1 (UPC-CoA-909/2025)

92. GDM1 discloses an egg carton (Eierkarton).

Fig.1

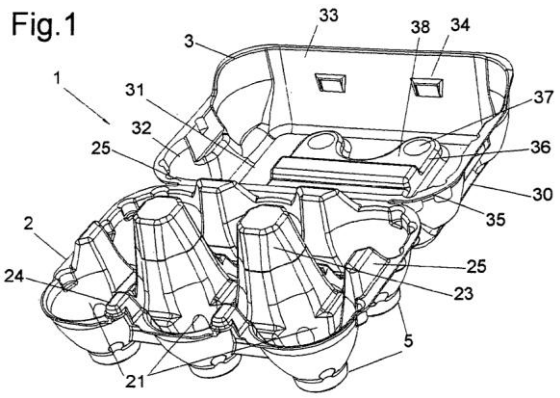
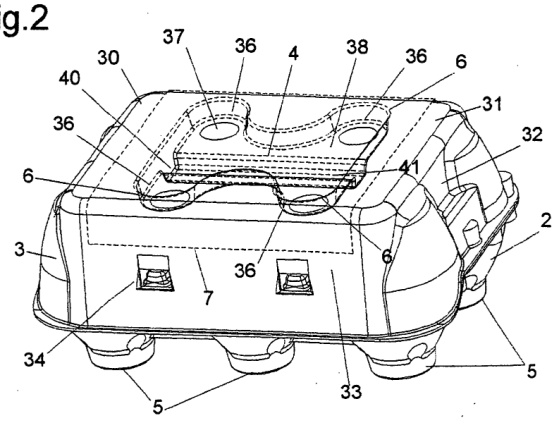


Fig.2



93. The egg carton (1) of GDM1 comprises a bottom part (2) and a cover part (3), which is hinged to the bottom part (2) by means of a hinge (25) (Biegescharnier). A sticker (7) (Aufkleber) is attached to it. The base part (2) has two parallel rows with a plurality of mould cavities (21) (Formvertiefungen) for holding eggs. The mould cavities (21) are formed by the corresponding design of the wall of the base part (2) and by two supports (23) (Stützen) arranged in the centre, so that eggs inserted therein do not touch each other. To fix the cover part (3) in the closed state, two holding noses (24) (Haltenasen) are arranged on a front side (Vorderseite) of the bottom part (2). The cover part is tub-shaped (von wannenförmiger Gestalt) comprising a back part (Rückteil), a top part (31) (Oberteil), and two side parts (32) (Seitenteile). On the front part (33) two openings (34) (Öffnungen) are arranged. They cooperate with the noses (24) of the bottom part (2) to lock the two parts in the closed state [0024-0027]; features 2, 2.1, 2.1.1, 2.1.2, 3, 3.1, 3.2).

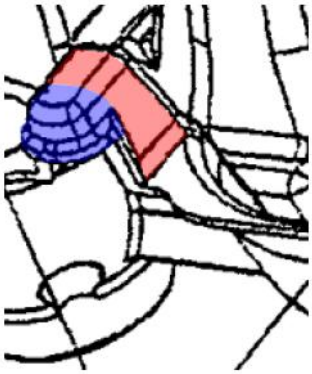
94. A recess (4) (Trog) with retaining connections (36) (Haltevertiefungen) parallel to the axis of the bending hinge (25) is arranged on the upper side of the cover ([0034]). According to paragraph [0036] column 10 lines 3-12 the size of the sticker (7) is arbitrary in itself, as long as it adequately covers the recess (4) and the retaining connections (36). The sticker can also be significantly larger. Its front side can be pulled down (heruntergezogen) to the bottom edge of the front part (33) of the top part (3).

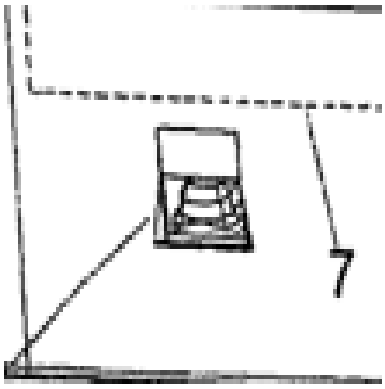
95. Contrary to Hartmann's view, GDM1 is a realistic starting point, as will be explained below.

96. Hartmann states that, in addition to what the Local Division found about GDM1 not disclosing the material of the packaging unit, the teaching of the patent at issue differs from GDM1 in other features. In particular, GDM1 does not disclose features 2.2.1, 4, and 5.

97. Hartmann has failed to provide arguments why the impugned decision was wrong in the assessments of features 4 and 5. Omni-Pac rightly takes the view that Hartmann's appeal in the counterclaim in relation to claim 1 solely revolves around the question whether selecting a fibrous material for the packaging disclosed in document GDM1 requires an inventive step or not, and that there are no actual grounds in the appeal for any alleged errors in the first instance decision in relation to features 4 and 5. A general reference to submissions made at first instance is only sufficient if and to the extent that the impugned decision does not address them (see *Abbott vs Sibio et al*, reference above, para. 17). This makes this part of the appeal inadmissible.

98. Hartmann's argument about feature 2.2.1 cannot be followed. Feature 2.2.1 is directly and unambiguously disclosed in GDM1. The figure below (to the left) is a color enhanced enlargement of the relevant part of figure 1 of GDM1, showing a detail of the nose (24) of figure 1. As illustrated, the nose (24) in blue extends downwards and outwards and is located on a protrusion in red, extending upwardly from the upper rim of the bottom part (2). The downward extension of the nose is indicated by the horizontal lines with an increasing diameter from top to bottom, starting from a flat upper surface. The circumstance that the lower surface is not shown and may be flat does not lead away from the disclosure of a nose according to the patent at issue. It can be seen in Figure 2 (illustrated below with an enlargement of the relevant part) that it engages with a co-operating aperture in the front surface of the cover part.





99. Thus, GDM1 describes an egg carton with all features of claim 1 except feature 1 (said package being formed of a fibrous material).

100. It is clear at the outset that GDM1 does not explicitly disclose the material of the packaging. This was recognized by the Local Division too (para. 160).

101. According to Hartmann, and contrary to the Local Division's finding, the skilled person implicitly recognizes that plastic should be used as the material in GDM1 and will not transfer the teaching of GDM1 to a teaching with fiber pulp. In Hartmann's view, the degree of precision of the details shown in GDM1 is very high and undoubtedly requires the packaging to be made of plastic and not from pulp.

102. However, and as pointed out by Omni-Pac at the oral hearing, the description (para. [0066]) of the patent at issue (ln. 50) prescribes offsets of the noses as small as 0.3 mm, and evidently this can be made in pulp (see also paras. [0049], [0067], [0079] and [0080]). This was not disputed by Hartmann and refutes Hartmann's assertion.

103. The same applies to the circumstance that figures 1 and 4 of GDM1 may show very detailed features which may not be produced by pulp in its entity in the same quality as by plastic, as Hartmann also argued. In addition, figures only give a schematic overview. They do not limit the scope of the disclosure.

104. Although the description of GDM1 sets out that thanks to the clamping protrusions on the underside and the clamping openings on the top, the egg cartons can be repurposed as building blocks,

suitable as toys for children of all ages ([0032]), the use of plastic alone for this invention cannot be considered as implied.

105. As regards feature 1, the findings of the Local Division included the following. It is undisputed that three materials were available at the priority date of the patent for egg packages, namely, pulp, cardboard and plastic. The skilled person is accustomed to selecting suitable materials from those generally known for a specific purpose. The selection of a material from a narrowly limited number of choices available does not require any special skills and therefore inventive activity. Pulp is one of the leading materials for egg packaging, and therefore it would have been obvious to the skilled person to use this material for the design disclosed in GDM1, at least where that design does not require the use of a specific material and where the person skilled in the art would otherwise be deterred from using pulp; such deterrents are not acknowledged in the present case. The arguments put forward by Hartmann, highlighting that pulp material was not suitable for making the packages of GDM1, due to the need for precision in the clamping structure, stability of the packages and re-usability/hygiene, were not found convincing.

106. The Court of Appeal agrees with the reasoning and the conclusions in the impugned decision on lack of inventive step – in particular the consideration that the skilled person is accustomed to selecting suitable materials from those generally known for a specific purpose and that pulp remains a viable solution for the package of GDM1. The fact that GDM1 does not disclose which material the egg package shall be formed of gives the person skilled in the art a motivation for choosing a suitable material in producing such packages. As already explained, the use of pulp for egg cartons formed part of common general knowledge. The selection of pulp as material for the egg packages disclosed in GDM1 may have some disadvantages compared to plastic when reusing them as a toy. The claimant refers to hygienic aspects, degree of precision, longevity, stability, and durability. Neither are any of these aspects covered by the disclosure of GDM1 nor are they mandatory to achieve. The egg package of GDM1 can also serve as a toy albeit for a shorter period of time. Moreover, GDM1 itself does not exclude the use of pulp for egg packages. It points to an egg package made out of pulp by calling it “Eierkarton” (egg carton) and refers to FR 2 441 549 A1 which relates to moulded containers made of paper pulp (emballages moulés en pâte à papier; p. 1 ln. 1-2.).

107. Therefore, the person skilled in the art was motivated to build the egg package of GDM1 from pulp or plastic likewise. The choice of a suitable material was therefore left to the discretion of the person skilled in the art, depending on the intended use.

108. The circumstance that, more than ten years after the filing date of GDM1, the commercial realisation in the case of “Eggplay” (H32 and H33) involved the use of plastic as the only material, demonstrates that the person skilled in the art, when weighing the pros and cons of the various possible materials for this specific type of packaging and its intended second use, selected plastic at his discretion. However, this does not mean that at the priority date the skilled person trying to solve his problem and starting from GDM1 would only use plastic.

109. Hartmann’s appeal in this part is therefore unsuccessful.

Claim 1 according to auxiliary request 1, inventive step in relation to GDM1 (UPC-CoA-909/2025)

110. In relation to claim 1, auxiliary request 1 introduces the following wording at the end of feature 2.2.1:

> said label (42) covering said nose (28) and said apertures (30)

111. The Local Division considered that although Figure 3 of GDM1 did not show the label covering either the nose or the openings, there was nevertheless a statement to this effect in the description.

112. Hartmann submits that the Local Division should not have assumed that the feature introduced can be inferred from GDM1.

113. The Court of Appeal agrees with the Local Division's finding, as paragraph [0036], column 10, ln. 6-12 of GDM1, reads (in translation): "The size of the sticker shown in Fig. 3 is, in itself, arbitrary, provided that it adequately covers the trough 4 and the retaining connection 36. The sticker may also be made considerably larger; for example, its front edge may extend down to the lower edge of the front section 33 of the cover section 3."

114. By consequence, claim 1 cannot be upheld in accordance with auxiliary request 1. In this part too, Hartmann's appeal is unsuccessful.

Claim 1 according to auxiliary request 2, inventive step in relation to GDM1 (UPC-CoA-918/2025)

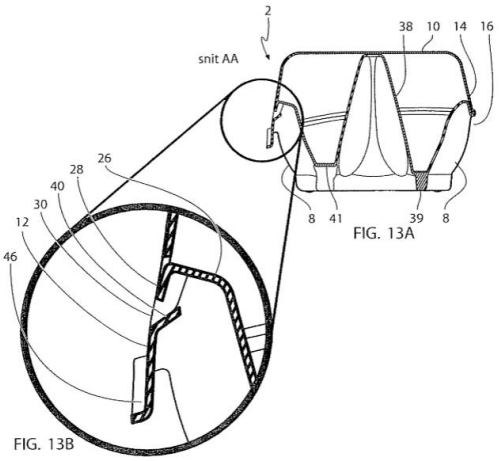
115. In relation to claim 1, auxiliary request 2 introduces the same additional wording as in auxiliary request 1, adding a further feature relating to the nose. Feature 2.2.1 reads as follows according to auxiliary request 2, where the blue underlined text represents the addition:

> the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6), said label (42) covering said nose (28) and said apertures (30), said nose (28) working as a hook that hooks onto a lower edge of the said aperture (30),

116. The added feature requires interpretation. It finds its basis in paragraphs [0013] and [0023] of the description. The relevant passage of paragraph [0013] reads:

> Since, the nose(s) are projecting downwardly and outwardly, the cooperating aperture(s) on the cover part can slide over the nose(s) during closing of the egg package and engage it in a locking manner, because the nose(s) will simply work as a hook that hooks onto a lower edge of the aperture. This way a simple – yet effective way – of providing reliable locking means on the cover part is achieved, which furthermore is easy to manufacture.

117. The corresponding passage in paragraph [0023] is nearly identical. The function as a hook is shown by figures 6B and 13B where the nose (28) bends downwards and forms a hook.



118. Omni-Pac asserts that claim 1 according to auxiliary request 2 lacks patentability in relation to GDM1 for the same reasons as laid out regarding claim 1 and 6 as granted. With reference to figures 1 and 2 of GDM1 (reproduced above at para. 92) Omni-Pac argues that to a skilled person, it is directly and unambiguously disclosed in GDM1 that the noses disclosed therein should function as a hook exactly as prescribed by the additional feature.

119. The Local Division found that there is no indication that the nose in GDM1 (reproduced above, para. 98) acts like a hook which engages the lower edge of the opening, and that this is also not obvious without falling into an always inadmissible retrospective view. The Court of Appeal comes to the same conclusion.

120. Omni-Pac's argument about the kinematic of opening and closing of the egg package according to GMD1 is not convincing. Omni-Pac makes a point about the need to pivot the lid when opening and closing, but that is self-explanatory and beside the point of disclosure of a nose working as a hook that hooks onto a lower edge of the aperture.

121. Omni-Pac's second argument relates to interaction between the noses and apertures in GDM1. This argument fails too because the description does not support Omni-Pac's view. Paragraph [0025] of GDM1 *in fine* sets out (in translation): "To secure the cover part 3 in the closed position, two retaining noses are arranged on the front side of the bottom part." Paragraph [0026], lines 13 to 17, reads: "The cover part 3 is trough-shaped and consists of a rear part, an upper part 31, two side parts 32, and a front part 33. Two openings 34 are arranged in the front part 33, which are intended to interact with the noses 24 of the bottom part 2 in order to lock the cover part 3 in the closed position with the bottom part 2." Omni-Pac wants to draw from the term interaction that the noses must interact with the bottom edge of the apertures (openings) to achieve the locking effect. There is however no disclosure in GDM1 of a nose working as a hook that hooks onto a lower edge of the aperture. Figure 1 of GDM1, which is the only disclosure of the design of that feature, cannot be understood like this either, because in Figure 1 the lower side of the nose is not (clearly) shown. The person skilled in the art receives no indication to build that part of the nose in in the form of a hook.

122. Furthermore, Omni-Pac made several statements at the oral hearing about friction between two planar surfaces as opposed to “positive locking” by a hook. Although Omni-Pac tried to make a distinction between these two mechanisms with reference to the angle (above 90 degrees it would be a frictional locking), the statements do not demonstrate that the underside of the nose 24 of GDM1 allows it to work as a hook.

123. To conclude, the skilled person, starting from GDM1, would not have arrived at claim 1 according to auxiliary request 2 without an inventive step.

124. For these reasons, Omni-Pac’s appeal in this part is unsuccessful and claim 1 shall be upheld according to auxiliary request 2, as in the impugned decision. There is no need to adjudicate on auxiliary requests 3 and 4.

Claim 6, novelty over GDM6 (UPC-CoA-918/2025)

125. GDM6 discloses an egg package.

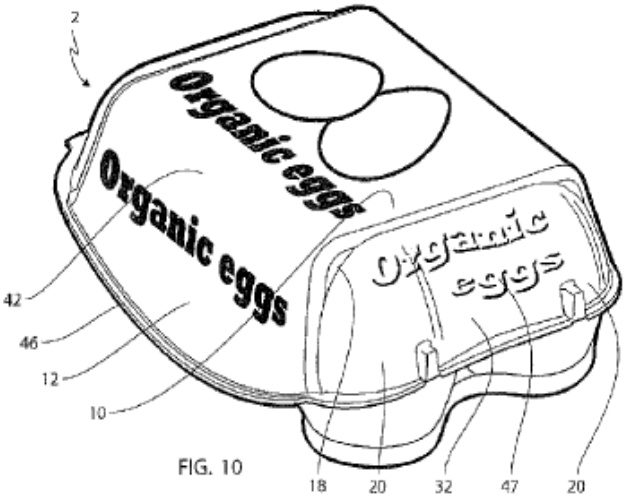


FIG. 10

126. GDM6 is a patent application filed by Hartmann, including the same drawings as in Figures 1 to 7 of the patent at issue. The description of GDM6 also largely reproduces literally that of the patent at issue. On this basis, it is substantially undisputed that features 6.0 to 6.2.3 are directly and unambiguously disclosed in GDM6.

127. The Local Division considered claim 6 novel over GDM6, as GDM6 is silent on the manufacturing process except for the reference on page 8, lines 21-31 to the manufacture of the egg packaging by suction moulds and from pulp, so that in any event there is no direct and unambiguous disclosure of features 3 to 5. Nor can it be established that the person skilled in the art supplements the missing features by recourse to his general technical knowledge, including FW2 and FW2a.

128. According to Omni-Pac, claim 6 lacks novelty in relation to prior art GDM6. While features 6.3, 6.4 and 6.5 might not be explicitly disclosed in GDM6, they are, however, implicitly disclosed due to the explicit mentioning of suction moulding as the preferred method of manufacturing.

129. Omni-Pac's arguments cannot be followed. In GDM6, the production method is mentioned only at page 7, lines 29-31; page 8, lines 21-22; and page 14, lines 23-28. The first two passages refer to suction moulding. The third passage refers to the two egg packages of Figure 8 being moulded together. There is no mention of either a relative positioning of the projection and apertures or of a drying step. Therefore, at least steps 6.3 and 6.5 are not explicitly disclosed by GDM6. The evidence relating to methods in industry (FW3 and FW4) provides evidence that pulp moulding as based upon suction techniques and a subsequent extraction and drying of the product – according to features 6.4 and 6.5 – were manufacturing steps commonplace in the art at the priority dates. However, the method step according to feature 6.3 is not hinted in the cited documents, in particular a relative positioning of the projection and the aperture in the moulding process for compensating deformations.

130. Claim 6 as granted is thus novel over GDM6.

Claim 6, inventive step in relation to GDM1 (UPC-CoA-918/2025)

131. Omni-Pac challenges the impugned decision, asserting that claim 6 lacks inventive step in relation to prior art GDM1. This inventive step attack was brought by Omni-Pac at first instance but was never decided upon.

132. Omni-Pac argues that GDM1 discloses all of features 6.1, 6.1.1, 6.1.1.1, 6.1.1.2, 6.1.2, 6.1.2.1, 6.1.2.2, 6.2, 6.2.1, 6.2.2 and 6.2.3 of claim 6, and that the skilled person would inevitably have turned to suction moulding as outlined in document FW2. The skilled person's knowledge is further demonstrated by documents FW3 and FW4. Omni-Pac in that respect further relies on an Expert Opinion by Mr. Gary Visser, WS1. Feature 6.3 is also implicit or at least obvious to a skilled person, so OmniPac argues. This is because a working locking mechanism implies that the components interacting to provide the locking must always be configured such that said interaction is achieved in the final product, meaning that said components need to be arranged suitably in the moulding form; otherwise, an egg package with a non-working and thus useless locking mechanism would be produced. Omni-Pac states "In fact, as the technical challenge in question (i.e. accounting for deformation in the cover part) is automatically countered with measure taken anyway (i.e. placing the retainment projection suitably to enable secure locking engagement with the apertures in the cover part), the mentioning of said technical challenge in the claim does not even constitute a "technical feature of an invention" in the sense of Rule 43(1) EPC".

133. Hartmann refutes the attack, arguing for inventiveness of claim 6 in relation to GDM1 in conjunction with the general knowledge of a person skilled in the art. GDM1 does not disclose the material (feature 6.0), nor does it disclose a nose directed downward and outward (feature 6.1.2.1), and it does not disclose the process-specific features 6.3, 6.4, and 6.5. It is disputed that the manufacture of a one-piece egg carton, in particular with the specific features of claim 6, by means of the suction moulding, was part of general technical knowledge as of priority date 1 and priority date 2. GDM1 is not a suitable starting point.

134. It has already been established that GDM1 is a suitable starting point in relation to claim 1, and this applies to claim 6 as well.

135. The findings made in relation to claim 1 apply likewise, meaning that features 6.1, 6.1.1, 6.1.1.1, 6.1.1.2, 6.1.2, 6.1.2.1, 6.1.2.2, 6.2, 6.2.1, 6.2.2 and 6.2.3 are disclosed in GDM1. In this context, it should be observed that GDM1 has a closing and locking mechanism as the one in the patent as granted, without a traditional locking flap, as can be seen from Figure 1 (above at para. 92).

136. The question is whether the skilled person would, not could, arrive at a method of manufacturing the patented egg package by suction moulding of a fibrous material. What is left for the skilled person, when consulting the teaching of GDM1, is:

- feature 6.0, a method of manufacturing an egg package comprising the features just mentioned, by suction moulding of a fibrous material,
- feature 6.3, placing said retainment projection (26) and co-operating aperture (30) relative to each other during moulding of the egg package (2) in a moulding form, such that deformations in the cover part (6) during manufacture are compensated for,
- feature 6.4, removing the egg package (2) from the form, and
- feature 6.5, drying said egg package (2) in an oven.

137. The manufacture of egg cartons by means of the suction moulding as in feature 6.0 was part of the skilled person's common general knowledge as of priority date 1 and priority date 2 (see paras. 78-79 above).

138. The fact that GDM1 does not disclose which material the egg package shall be formed of gives the person skilled in the art a motivation for choosing a suitable material in producing such packages and the use of pulp for egg cartons formed part of common general knowledge (para. 106 above).

139. Features 6.4 and 6.5 formed part of the skilled person's common general knowledge as evidenced by FW3, pages 418-421.

140. The method step according to feature 6.3 is not disclosed in GDM1, in particular a relative positioning of the projection and the aperture in the moulding process for compensating deformations. GDM1 does not refer to this. This raises the question of whether the general technical knowledge gives a pointer to the person skilled in the art to carry out this step and take care of compensation according to feature 6.3 during moulding in realising an egg package with reliable locking. As explained in the section on claim construction (para. 76) the teaching about feature 6.3 that can be derived from the patent at issue is that deformations will occur during the manufacturing process and should be compensated for by placing the retainment projection and co-operating aperture relative to each other during moulding of the egg package in a moulding form. Failing any further guidance on how to achieve this, the skilled person will have to rely on common general knowledge and a certain amount of testing. It is undisputed between the parties that the person skilled in the art, at the effective date of the patent, was aware that deformations may occur during the moulding process, as confirmed also at para. [0022] of the patent itself.

141. The Court of Appeal considers that the skilled person, familiar with suction moulding and aware that deformations will occur after the packages are removed from the mould and dried in an oven , starting from GDM1, would arrive at placing said retainment projection and co-operating aperture

relative to each other during moulding in accordance with feature 6.3 based on routine testing in the production environment.

142. Therefore, claim 6 lacks inventive step in relation to GDM1. Claim 6 as granted must be revoked.

Claim 6 according to auxiliary request 1

143. In relation to claim 6, auxiliary request 1 introduces the following wording at the end of feature 6.1.2.1:

> said label (42) covering said nose (28) and said apertures (30)

144. Omni-Pac rightly challenges auxiliary request 1 with reference to GDM1. The addition cannot make claim 6 patentable. Even though GDM1 does not show the label covering either the nose or the openings, there is nevertheless a statement to this effect in the description (see para. 113 above).

Claim 6 according to auxiliary request 2

145. Like for claim 1, feature 6.1.2.1 reads as follows according to auxiliary request 2, where the blue underlined text represents the addition:

> the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6), said label (42) covering said nose (28) and said apertures (30), said nose (28) working as a hook that hooks onto a lower edge of the said aperture (30),

146. Omni-Pac objects to this amendment of claim 6 with reference to GDM1 (inventive step) and GDM6 (novelty).

147. On novelty in relation to GDM6, Omni-Pac argues that the feature introduced by auxiliary request 2 is explicitly disclosed in document GDM6, even though the “noses” are called “flaps” therein.

148. The passage in question in GDM6 reads (p. 4, ln. 21-25): “Since, the retainment flap(s) are projecting downwardly and outwardly, the cooperating aperture(s) on the cover part can slide over the retainment flap(s) during closing of the egg package and engage it in a locking manner because the retainment flap(s) will simply work as a hook which hooks onto a lower edge of the aperture.” However, what is still missing in GDM6 is a disclosure of the method step according to feature 6.3, in particular a relative positioning of the projection and the aperture in the moulding process for compensating deformations. GDM6 is not novelty-destroying in relation to claim 6 according to auxiliary request 2.

149. Moreover, for the reasons set out above in relation to claim 1 according to auxiliary request 2, claim 6 according to auxiliary request 2 is inventive over GDM1.

150. Claim 6 shall consequently be upheld in the version according to auxiliary request 2.

Infringement (UPC-CoA-908/2025)

151. The Local Division found that there was no infringement of claims 1 and 6, essentially because the contested embodiments were considered not to have a retainment projection within the meaning of the patent. In relation to method claim 6, there was in addition no realisation of feature 6.3.

152. Hartmann asserts a literal infringement of claim 1, an infringement of claim 6, and that the contested embodiment also fulfils the features of claim 1 in the version of the auxiliary requests filed.

153. Omni-Pac defends the impugned decision and has maintained the grounds brought forward at first instance.

154. In view of the outcome on validity, the Court of Appeal will assess whether the contested embodiments make use of the patent at issue in amended form according to auxiliary request 2, starting with features 2.2.1 and 6.1.2.1.

155. Insofar as relevant, Hartmann relies on the following illustrations:

In English, the text means “triangular-shaped nose pointing downwards”.

In English, “Rückseite” means “back side”, “Endseite” means “end side”, “Vorderseite” means “front side” and “Nach oben erstreckenden Haltevorsprung” means “upwardly extending retainment projection”.

156. Based on the claim interpretation as set out above, features 2.2 and 2.2.1 of claim 1 are not fulfilled by the contested embodiments. There is no upwardly extending retainment projection. Instead there is a closure flap.

157. The evidence provided by Omni-Pac provides further support for the absence of any upwardly extending retainment projection, and the existence of a flexible closure flap in the contested embodiments:

158. In view of the non-fulfilment of features 2.2 and 2.2.1, it can be left open whether the nose of the contested embodiments extends downwards, whether the sections of the cover part of the contested embodiment have the ovoid shape, and whether the nose extends beyond the front surface of the cover part in the sense of feature 4. Neither is there a need to consider whether the nose or tab of the contested embodiment functions as a hook.

159. The same considerations apply in relation to claim 6 as amended. Feature 6.1.2.1 is missing in the contested embodiments, bringing it outside the scope of protection.

160. As a result, Hartmann's appeal in the infringement action must be rejected.

Costs

161. Hartmann's appeal in the infringement action is unsuccessful. Hartmann shall bear the costs at first instance (as set out in the impugned order at C., first sentence) and for the appeal proceedings 908/2025.

162. At first instance, the Omni-Pac companies were ordered each to bear 40 % of the costs of the counterclaim for revocation, and Hartmann to bear the remaining 20 %. This reflected the outcome where patent claim 1 was maintained in limited form on the basis of auxiliary request 2, while in relation to patent claim 6, on the other hand, the action for revocation was unsuccessful (see para. 227 of the impugned order).

163. Hartmann's appeal 909/2025 in the counterclaim has been unsuccessful. Omni-Pac's appeal 918/2025 has been partly successful in relation to claim 6 of the patent. Unlike at first instance, claim 6 as granted has been revoked, but upheld in accordance with auxiliary request 2. As regards claim 1, which had already been revoked and upheld in accordance with auxiliary claim 2 at first instance, there is no different outcome on appeal and Omni-Pac has been unsuccessful. Altogether, the difference in outcome in the counterclaim is of relatively minor importance and does not lead to a change in the distribution of litigation costs at first instance. For the counterclaim appeal proceedings, Hartmann shall be obliged to bear 75 % of the costs and the Omni-Pac companies 12.5 % each.

DECISION

I. Hartmann's appeals (UPC-CoA-908/2025 and UPC-CoA-909/2025) are rejected.

II. Point A. of the Decision of the Court of First Instance, Local Division Düsseldorf, of 15 October 2025, UPC-CFI-377/2024 is set aside and replaced by the following: European patent 2 755 901 B1 is revoked with effect in all Contracting Member States in which it is in force in so far as its subject matter extends beyond the following wording of the patent claims:

> 1. A display and distribution package (2) for eggs, said package being formed of a fibrous material, the package (2) comprising:
> - a bottom part (4) comprising a plurality of egg-receiving compartments (8) having non-planar side surfaces so as to match at least partially the outer contours of an egg, the plurality of compartments (8) being arranged in at least two parallel rows,

- a cover part (6) comprising a top surface (10), a front surface (12), a back surface (14), and two substantially planar end surfaces (18),
- the cover part (6) being permanently connected to the bottom part (4) by a hinge (16) between the back surface (14) of the cover part (6) and the bottom part (4) so as to allow the cover part (6) to move between an open position and a closed position,
- said cover part (6) comprising partial ovoid portions (20) extending outwardly from the two substantially planar end surfaces (18), wherein each of the two substantially planar end surfaces (18) apart from the ovoid portions (20) completely spans the entire end surfaces of the cover part (6),
- the bottom part (4) comprising a back side (22), a front side (24), two end sides, and at least one upwardly extending retainment projection (26) extending from the front side (24) of the bottom part (4),
- the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6), **characterized in that** the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with one or more co-operating apertures (30) in the front surface (12) of the cover part (6), said label (42) covering said nose (28) and said apertures (30), said nose (28) working as a hook that hooks onto a lower edge of the said aperture (30),
- the nose (28) not extending beyond the front surface (12) of the cover part (6) when the cover part (6) is in its closed position.

2. A display and distribution package (2) for eggs according to claim 1, wherein the one or more apertures (30) are formed in one or more recesses (32) in the front surface (12) of the cover part (6).

3. A display and distribution package (2) for eggs according to claim 2, wherein the one or more recess (32) in the front surface (12) of the cover part (6) extends from the upper part of the front surface (12) of the cover part (6) adjacent to the top surface (10) of the cover part (6) down to approximately the middle of the front surface (12) of the cover part (6).

4. A display and distribution package (2) for eggs according to claim 2 or 3, wherein the recesses (32) comprise a bottom wall (34) and two opposing sidewalls (36) extending from the front surface (12) of the cover part (12) to the bottom wall (34).

5. A display and distribution package (2) for eggs according to any of the claims 1 - 4, wherein the cover part (6) comprises a tongue (40) that extends upwardly and inwardly from the lower edge of the one or more apertures (30), said lower edge of the one or more apertures being substantially flush with the front surface (12) of the cover part (6), said tongue (40) being adapted for cooperating with the outwardly and downwardly extending nose (28).

6. A method of manufacturing an egg package (2) by suction moulding of a fibrous material, the package (2) comprising:
- a bottom part (4) comprising a plurality of egg receiving compartments (8) having non-planar side surfaces so as to match at least partially the outer contours of an egg, the plurality of compartments (8) being formed in at least two parallel rows,
- a cover part (6) comprising a top surface (10), a front surface (12), a back surface (14), and two end surfaces (18),
- the cover part (6) being permanently connected to the bottom part (4) by a hinge (16) between the back surface (14) of the cover part (6) and the bottom part (4) so as to allow the cover part (6) to move between an open position and a closed position,
- the bottom part (4) comprising a back side (22), a front side (24), two end sides, and an upwardly

extending retainment projection (26) extending from the front side (24) of the bottom part (4), the cover part (6) being provided with a label (42) covering the top surface (10) and a substantial part of the front surface (12) of the cover part (6),
the method being **characterised by** the following features of the package:
- the upwardly extending retainment projection (26) having a downwardly and outwardly extending nose (28) for locking engagement with a co-operating aperture (30) in the front surface (12) of the cover part (6),
- said label (42) covering said nose (28) and said apertures (30), said nose (28) working as a hook that hooks onto a lower edge of the said aperture (30),
- the nose (28) not extending beyond the front surface (12) of the cover part (6) when the cover part (6) is in its closed position,
and the method being **further characterised by** the method steps of:
- placing said retainment projection (26) and co-operating aperture (30) relative to each other during moulding of the egg package (2) in a moulding form, such that deformations in the cover part (6) during manufacture are compensated for,
- removing the egg package (2) from the form, and
- drying said egg package (2) in an oven.

7. The method according to claim 6, further comprising the step of after-pressing said egg package (2).

8. The method according to any of the claims 6 - 7, further comprising the step of forming a tongue (40) in the cover part (6) extending upwardly and inwardly from the lower edge of the one or more apertures (30), said lower edge of the one or more apertures being substantially flush with the front surface (12) of the cover part (6), and said tongue (40) being configured for cooperating with the at least one outwardly and downwardly extending nose (28).

III. Hartmann shall bear the costs and other expenses in the infringement action appeal proceedings (908/2025) .

IV. For the counterclaim appeal proceedings (909/2025 and 918/2025), Hartmann shall bear 75 % of the costs and the Omni-Pac companies shall each bear 12,5 % of the costs and other expenses.

V. All other requests are rejected.

VI. The value of the appeal proceedings is set to 500.000 EUR for the infringement action and 500.000 EUR for the revocation action.

Issued on 19 August 2026

Rian Kalden
Date: 2026.08.19 09:20:12 +02'00'

Rian Kalden, presiding judge and legally qualified judge

Digitally signed by Åsa Ingeborg Simonsson
Date: 2026.08.18 21:51:13 +02'00'

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Ursula Rombach

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Date: 2026.08.19 09:16:03 +02'00'

Patricia Rombach, legally qualified judge

Elisabetta Papa

Firmato digitalmente da Elisabetta Papa
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Elisabetta Papa, technically qualified judge

Erwin Hermann WISMETH

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Erwin Wismeth, technically qualified judge