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**Datasheet for the decision  
of 14 November 2011**

**Case Number:** T 1401/08 - 3.2.07

**Application Number:** 01938827.1

**Publication Number:** 1284918

**IPC:** B67D 1/06, B67D 1/14

**Language of the proceedings:** EN

**Title of invention:**  
Drink dispenser assembly and container for drink and drink  
dispensing line

**Patent Proprietor:**  
HEINEKEN TECHNICAL SERVICES B.V.

**Opponents:**  
Carlsberg Breweries A/S  
MICRO MATIC A/S

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 54, 56, 83, 84, 123(2)(3)  
EPC R. 115(2)  
RPBA Art. 15(3)

**Keyword:**  
"Admissibility of the request: yes"  
"Added subject-matter: no"  
"Protection extended: no"  
"Clarity and support: yes"  
"Sufficiency: yes"  
"Novelty: yes"  
"Inventive step: yes"

**Decisions cited:**  
-

**Catchword:**

-



Case Number: T 1401/08 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 14 November 2011

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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
3 June 2008 concerning maintenance of European  
patent No. 1284918 in amended form.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** P. O'Reilly  
E. Dufrasne

## Summary of Facts and Submissions

I. Oppositions were filed by opponents 01 and 02 against European patent No. 1 284 918 as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step) and 100 (b) EPC (insufficiency).

The opposition division decided that the patent could be maintained in amended form in accordance with the third auxiliary request.

II. The proprietor (hereinafter appellant/proprietor) and opponent 01 (hereinafter appellant/opponent) each filed an appeal against that decision.

III. The appellant/proprietor requested that the appeal of the opponent be dismissed and that the decision under appeal be set aside and the patent be maintained on the basis of the main request filed during the oral proceedings, or, in the alternative, of the first auxiliary request, filed during the oral proceedings, or, of one of the second and third auxiliary requests filed with letter dated 14 October 2011.

The appellant/opponent requested that the decision under appeal be set aside and that the patent be revoked.

The party as of right (opponent 02) made no requests during the appeal proceedings and indicated in its letter dated 5 October 2011 that it would not attend the oral proceedings. The oral proceedings were continued in the absence of that party pursuant to Rule 115(2) EPC and Article 15(3) RPBA.

IV. Claim 1 of the **main request** reads as follows  
(amendments when compared to claim 1 of the patent as granted are depicted in bold or struck through by the Board):

"Drink dispenser assembly (1,25) comprising: a dispenser device (2,37) provided with a dispensing head (18,~~21~~9) for accommodating a **flexible** dispensing line (17,28), and a container (7,27) containing carbonated drink, connected during use to the **flexible** dispensing line (17,28), which has a coupling element at an outlet end for connection to the dispensing head (18,29), **wherein the dispensing head (18, 29) is provided with a knob or handle (20, 33) and has an operating element (45, 98) which is connected to the knob or handle,** characterised in that the coupling element comprises a shut-off valve (19,32) ~~that~~ **comprising an outer sleeve (70) of rigid plastic material, which shut-off valve can be detachably connected to the operating element (45,98) for opening and closing the shut-off valve by moving the knob or handle (20, 33), wherein the shut-off valve, when it is connected to the dispensing head, can be opened and closed for dispensing the carbonated drink and which shut-off valve** can be closed while placing the outlet end of the dispensing line (17,28) into the dispensing head (18,29) and, respectively, removing the outlet end of the dispensing line (17,28) from the dispensing head (18,29)."

V. In view of the tenor of the present decision the wording of claim 1 of the other requests is of no relevance.

VI. The documents of the opposition proceedings cited in the present decision are the following:

D7b:US-A-5 639 064

D11:WO-A-99/11563

and of the appeal proceedings:

D14:US-A-5 265 766

D15:US-A-5 392 958

VII. The arguments of the appellant/proprietor may be summarised as follows:

(i) The requests filed with letter of 14 October 2011 and subsequently amended during the oral proceedings should be admitted into the proceedings. They are in part a response to the provisional opinion of the Board, are based on existing dependent claims and comply with Articles 123(2) and (3) EPC.

(ii) The amendments made to the claims of the main request comply with Articles 123(2) and (3) EPC.

Already from claims 50 and 51 of the application as originally filed there is a basis for the outer sleeve being rigid since therein the tube section is specified both to form the outer sleeve and to be rigid. In paragraph [0036] of the patent in suit, corresponding to page 9, lines 9 to 13 of the application as originally filed, it is mentioned that the outlet end 41 is made of rigid plastic.

It is self-evident that the fact that the claims specify that the shut-off valve can be opened and

closed when connected to the dispensing head does not imply the inverse that it is open- and closable only when connected.

Claim 3 of the application as originally filed provides a basis for the shut-off valve being detachably connected to the operating element.

The independent claims have been amended to add an extra feature so that their scope of protection has been limited in compliance with Article 123(3) EPC.

(iii) The claims comply with Article 84 EPC.

The description of the patent in suit, e.g. paragraph [0050] gives information on the flexibility requirements for the dispensing line so that the meaning of the term is clear.

The wording "for opening and closing the shut-off valve" clearly refers to the operating element performing this function.

Both the opening and closing functions of the shut-off valve clearly relate to dispensing since the absence of a closing function would lead to the contents of the container being dispensed over the floor.

With respect to claim 19 the definition with respect to the dispensing head requires that the dispensing line and the shut-off valve have a special construction allowing their use with a dispensing head.

(iv) The invention as claimed is sufficiently clearly defined that it can be carried out by the person skilled in the art in accordance with Article 83 EPC.

The skilled person would know the flexibility required for the dispensing line. Paragraphs [0038], [0045] and [0050] of the patent in suit explain the flexibility required in terms of the function of this flexibility.

(v) D14 and D15 were late filed and should not be admitted into the proceedings. They concern the dispensing of coffee by gravity and are not more relevant than the documents already in the proceedings.

(vi) The subject-matter of each of claims 1 and 19 of the main request is novel.

In the case of both claims 1 and 19 the dispensing line and the shut-off valve are part of the claim. D11 does not disclose a shut-off valve that can be opened and closed. It merely discloses a closure device that can be opened.

D14 and D15 do not disclose a container containing carbonated drink as is required by claim 19. The drink contained therein is coffee and it is air-tight and gas-tight to preserve the aroma of the coffee.

(vii) The subject-matter of claims 1 and 19 of the main request involves an inventive step.

Starting from D11 the skilled person would not turn to D7b to find a solution to the problem of preventing dripping from the dispensing line when placing it on



and removing it from the dispensing head. The valve disclosed in D7b is a valve for connecting together either a container and a tube or two tubes. The skilled person would not turn to such a connecting device in order to solve a problem which arises in a single dispensing line.

VIII. The arguments of the appellant/opponent may be summarised as follows:

(i) The requests of the appellant/proprietor filed with letter dated 14 October 2011 should not be admitted into the proceedings as late filed. The subject-matter of the independent claims goes in a direction different from that of the previous requests. Also, the subject-matter of the amended independent claims of the requests has not been searched and they are not *prima facie* allowable because they raise questions of compliance with Articles 123(2) and (3) EPC.

(ii) The amendments to claims 1 and 19 of the main request are also not allowable as they do not comply with Articles 123(2) and (3) EPC.

There is no basis in the application as originally filed for the reference to "an outer sleeve (70) of rigid plastic material".

There is no basis for the reference in the claims to the shut-off valve being detachably connected to the operating element. In claim 4 as originally filed it is the coupling means that is for detachable connection to the operating element.

The wording of claim 1 which specifies that the shut-off valve "when it is connected to the dispensing head" can be opened and closed implies that the opening and closing is only possible when connected to the dispensing head, but this was not disclosed in the application as originally filed.

The opening and closing of the shut-off valve is no longer linked to the operating element but is dependent upon the detachable connection and this was not originally disclosed.

The amendment whereby the shut-off valve "can be detachably connected to the operating element (45, 98) for opening and closing the shut-off valve" offends Article 123(3) EPC. This feature was not contained in any form in the independent claims of the patent as granted. Since this feature is an intermediate generalisation of a narrower disclosure it therefore extends the scope of protection.

(iii) The independent claims of the main request do not comply with Article 84 EPC.

The term "flexible" is not clear, nor is it clear that the dispensing line is part of the claims.

It is not clear to what the wording "for opening and closing the shut-off valve" refers since it could refer to either its detachable connection or to the operating element.

It was not clear that the shut-off valve is for dispensing drink since it is for opening and closing whereas closing has nothing to do with dispensing.

With respect to claim 19 the features of the dispensing head are not part of the claim so that the features of the dispensing line which is defined with respect to the dispensing head are not clear.

(iv) The invention as claimed is not sufficiently clearly defined that it can be carried out by the person skilled in the art, contrary to Article 83 EPC.

The skilled person would not know how to construct a flexible hose since there is no example in the description of the material used to form the hose. The skilled person would also not be able to construct a rigid plastic sleeve since he would not know how rigid it should be made. There is also no indication in the description of how to prevent the shut-off valve from being open before the dispensing line is placed in the dispensing head. There is only one example in the description of a detachable connection of the shut-off valve to the dispensing head whereas the claims are not limited to this example.

(v) D14 and D15 should be admitted into the proceedings. They are relevant in particular to the independent claim relating to the container since they implicitly disclose carbonated drink and can affect the novelty of that claim.

(vi) The subject-matter of each of claims 1 and 19 of the main request lacks novelty.

D11 takes away the novelty of the subject-matter of claims 1 and 19 as these claims do not include the dispensing line or the shut-off valve as features of the claim. This is evident in claim 1 wherein it is indicated that the dispensing head is "for accommodating" the dispensing line and that the shut-off valve in the line is operated "when it is connected to the dispensing head". The same applies to claim 19 wherein the dispensing line "can be connected to" the valve of the container and the line is operated "when it is connected to the dispensing head". Since the dispensing line is not a feature of these claims this means that also the shut-off valve to which reference is made in the claim is not a feature of these claims. The remaining features of the claims are disclosed in D11. It is accepted that if the dispensing line with the shut-off valve is considered to be part of these claims then D11 does not disclose the shut-off valve as specified in the claims and the subject-matter of these claims would then be novel.

Each of D14 and D15 takes away the novelty of the subject-matter of claim 19 which does not include the dispensing head as a feature of the claim. Although the carbonated drink is not explicitly mentioned in these documents it is implicitly disclosed. The container is mentioned as air-tight and gas-tight which implies that the liquid therein is a carbonated drink.

(vii) The subject-matter of each of claims 1 and 19 of the main request lacks an inventive step.

The nearest prior art document is D11. This document does not disclose a shut-off valve that can be opened and closed. The problem to be solved is to provide an easy introduction of the dispensing line and to avoid dripping. The skilled person would solve this problem by replacing the closure device known from D11 with a valve in accordance with the teaching of D7b. This valve can be opened and closed when assembled but is sealed when disassembled. In this respect it should be noted that the valve according to D7b is not necessarily connected directly to a container but may be arranged in-line, see column 4, lines 27 to 31.

IX. The party as of right made no submissions during the appeal proceedings.

## **Reasons for the Decision**

### 1. *Admissibility of the requests*

1.1 The patent as granted contained three independent claims directed respectively to a drink dispenser assembly, a drink dispenser device, and a container.

With letter of 14 October 2011 the appellant/proprietor filed a main request containing a first independent claim 1 directed to a drink dispenser assembly together with eighteen dependent claims and a second independent claim 19 directed to a container together with ten dependent claims. The first auxiliary request comprised only the dispenser assembly claims 1 to 18 of the main request. The second auxiliary request similarly contained two independent claims together with their

dependent claims, whereby each of the independent claims contained the same extra features as compared to the corresponding independent claims of the main request. The claims of the third auxiliary request were the same as those of the second auxiliary request except that the claims directed to the container were no longer present in the same manner as the first auxiliary request. During the oral proceedings the main and first auxiliary requests were replaced by new requests wherein a comma was deleted from claims 1 and 19 at a position wherein there had not been any comma at the corresponding part of claim 1 of the second auxiliary request.

- 1.2 The independent claims of the main request differed both from those of the patent intended to be maintained according to the decision of the opposition division and from the sets of claims of the requests filed with the appeal of the appellant/proprietor. Compared to the patent as granted the independent claims essentially included the features of dependent claim 3 of the patent as granted.
- 1.3 The appellant/opponent argued that the subject-matter of the independent claims went in a direction different from that of the previous requests, that the subject-matter had not been searched, and that they were not *prima facie* allowable because they raised questions of compliance with Articles 123(2) and (3) EPC.
  - 1.3.1 With regard to the different direction the Board would note that with its appeal the appellant/opponent introduced two new documents D14 and D15 so that it could expect a possible change in direction as a result

of this. The appellant/opponent had further argued that the claims of requests filed by the appellant/proprietor with its appeal did not comply with Article 123(2) EPC amongst other matters. Also, in its provisional opinion communicated to the parties with the summons to oral proceedings the Board had cast doubts on the compliance of claim 1 of the patent as intended to be maintained by the opposition division with Article 123(2) EPC.

In view of the above it should not have come as a surprise to the appellant/opponent that the requests filed with letter dated 14 October 2011 of the appellant/proprietor might go in a different direction.

- 1.3.2 The amendments to the claims are based on dependent claim 3 of the patent as granted for the main and first auxiliary requests and dependent claim 5 of the patent as granted for the second and third auxiliary requests. Therefore the argument of the appellant/opponent that these were not searched is untenable, also in view of the fact that the appellant/opponent had opposed the patent as a whole. In any case the appellant/opponent had time in which to carry out a further search had it felt the subject-matter had not previously been searched. It did not do this.

The removal of the comma in claim 1 during the oral proceedings did not change essentially the subject-matter of the claims.

- 1.3.3 Any amended claim which is not a simple combination of existing claims requires an examination for compliance with Articles 123(2) and (3) EPC. For reasons that will

become apparent below (see point 2) the Board came to the conclusion that the claims complied with these articles.

- 1.4 The Board therefore decided to admit the requests into the proceedings and did not change this decision when subsequently the need to remove the comma was recognised. This removal was not objected to by the appellant/opponent.

*Main request*

2. *Compliance of the amendments to the claims with Articles 123(2) and (3) EPC*

- 2.1 The appellant/opponent argued that there is no basis in the application as originally filed for "an outer sleeve (70) of rigid plastic material".

The Board does not agree with this argument. As pointed out by the appellant/proprietor, claims 50 and 51 as originally filed together with page 9, lines 9 to 13 provide a basis for this amendment. Claim 50 specifies a "relatively rigid tube section" and claim 51 specifies that "the tube section (41) forms the outer sleeve (70) of the shut-off valve". Page 9, lines 9 to 13, indicates that the outlet end 41 is "made of rigid plastic". Thus, it is clear that there is an outer sleeve of the valve and that this sleeve is formed of relatively rigid material, in particular rigid plastic. The fact that the term "relatively" is not present in the claim has no effect since the term "rigid" is inherently a relative term.



Due to the above basis, there is also no need for the amendment to include further features of the outer sleeve, such as lateral passageways.

2.2 The appellant/opponent further argued that there is no basis for the general reference in the claim to the shut-off valve being detachably connected to the operating element, pointing out that in claim 4 as originally filed it is more specifically the coupling means on the shut-off valve that is for detachable connection to the operating element. However, in claim 3 as originally filed it is expressly indicated that the shut-off valve can be detachably connected by the operating element so that there is a basis here for the amendment.

2.3 The appellant/opponent also argued that the wording of the independent claims which specifies that the shut-off valve "when it is connected to the dispensing head" can be opened and closed implied that the opening and closing was **only** possible when connected to the dispensing head and that this was not disclosed in the application as originally filed. As pointed out by the appellant/proprietor, however, this meaning cannot be attributed to the claim since the fact that the claim specifies a situation in which the shut-off valve can be opened and closed does not imply that it cannot be opened and closed when not in this situation, i.e. not in connection with the dispensing head, rather the claim is silent on this matter.

2.4 The appellant/opponent moreover argued that the opening and closing of the shut-off valve is no longer exclusively linked to the operating element but is

dependent upon the detachable connection. The Board notes that the wording of the claim may not be the very best in this respect. Nevertheless, it is stated in the claim that the opening and closing of the shut-off valve is "by moving the knob or handle". Furthermore it is specified that the operating element is connected to the knob or handle. Therefore it is clear that the opening and closing of the shut-off valve is effected by the operating element, as was set out in claim 3 as originally filed. Therefore this claim provides a basis for the wording of the present independent claims.

2.5 With respect to the amendment whereby the shut-off valve "can be detachably connected to the operating element (45, 98) for opening and closing the shut-off valve" the appellant/opponent argued that this also offended Article 123(3) EPC. This feature was not contained in any form in the independent claims of the patent as granted. The appellant/opponent argued that since this feature was an intermediate generalisation of the narrower disclosure of a fork and a flange/groove in the description it extended the scope of protection. The appellant/opponent was unable to explain why the addition of limiting feature to an independent claim could lead to the protection conferred by the patent being extended.

2.6 Therefore, the amendments comply with Articles 123(2) and (3) EPC.

3. *Compliance with Article 84 EPC*

- 3.1 The appellant/opponent argued that the term "flexible" is not clear and that it was not clear that the dispensing line was part of the claims.

The Board cannot agree with this argument. As pointed out by the appellant/proprietor the description of the patent in suit provides information in paragraphs [0038], [0045] and [0050] as to the flexibility requirements that it must fulfil.

The Board considers that the dispensing line is part of the subject-matter of claims 1 and 19 of the main request for reasons that are explained below in point 6.2 dealing with novelty since this argument was central to one of the attacks of the appellant/opponent with respect to novelty.

- 3.2 The appellant/opponent argued that it is not clear to what the wording "for opening and closing the shut-off valve" refers since it could refer to either its detachable connection or to the operating element. The Board considers that whilst there could be some grammatical doubt as to what the wording refers to, nevertheless when the claim as a whole is considered there can be no doubt since this action is defined in the claim to be "by moving the knob or handle" and these are defined to be connected to the operating element. Therefore, from the claim as a whole it is clear that it is the operating element which effects the opening and closing of the shut-off valve.

- 3.3 The appellant/opponent argued that it was not clear that the shut-off valve was for dispensing drink since it was for opening and closing whereas closing had

nothing to do with dispensing. The appellant/proprietor pointed out that without the closing function the drink would end up going all over the floor which could hardly be called dispensing. The Board agrees with the appellant/proprietor that the claim is clear in this respect: dispensing is concerned with providing a specific amount of drink, without spilling it.

3.4 With respect to claim 19 the appellant/opponent argued that the features of the dispensing head were not features of the claim so that the features of the dispensing line which is defined with respect to the dispensing head were not clear. The Board agrees that that the dispensing head is not part of this claimed container. This does not, however, mean that the definitions of the dispensing line with respect to the dispensing head are automatically unclear. This means rather that for the shut-off valve it must at least be capable of being opened and closed by an external member, i.e. a dispensing head, which has constructional implications for the valve and the dispensing line.

3.5 Therefore the claims comply with Article 84 EPC.

4. *Insufficiency (Article 83 EPC)*

4.1 The appellant/opponent argued that the skilled person would not know the required flexibility for the flexible dispensing line.

The Board cannot agree with this argument. Even without further instruction the skilled person knows how to choose a suitable flexibility for the required purpose

of pushing the line through the guide tube. Moreover, as pointed out by the appellant/proprietor the description of the patent in suit provides information in paragraphs [0038], [0045] and [0050] as to the flexibility requirements that it must fulfil.

4.2 The appellant/opponent further argued that the skilled person would not know the required rigidity for the outer sleeve of the valve. As mentioned by the appellant/proprietor it would need to have sufficient rigidity to be pushed through the guide tube of the dispensing head as set out in paragraph [0045]. It would furthermore need sufficient rigidity to be clamped in the dispensing head as set out in paragraphs [0025], [0036] and [0050]. The same applies to its opening/closing action via the operating element mentioned in paragraphs [0004], [0039], [0044] and [0050]. The skilled person would not have a difficulty in deciding upon an appropriate rigidity and the rigidity properties of the various plastics materials are well-known so that there would be no problem in selecting an appropriate material.

4.3 The appellant/opponent argued that the patent contains no information as to how to ensure that the shut-off valve is prevented from opening before being placed in the dispensing head. The description of the patent, however, in paragraph [0015], indicates appropriate shut-off valves, e.g. one with a closed equilibrium position or one that is spring-biased which could be biased to a closed position. Therefore the skilled person would have no problem in selecting an appropriate valve construction.

4.4 The appellant/opponent pointed out that there is only one example of a detachable connection for the dispensing line to the dispensing head disclosed in the patent in suit and suggested that the skilled person would not know any others. The Board cannot agree with this argument. There are clearly many well-known means for providing a detachable connection so that the skilled person can carry out this aspect of the invention without undue burden.

4.5 The Board concludes therefore that the subject-matter of the invention is sufficiently clearly disclosed that it can be carried out by the person skilled in the art in accordance with Article 83 EPC.

5. *Admissibility of documents filed in the appeal proceedings*

5.1 The appellant/opponent filed D14 and D15 along with its appeal grounds alleging that they each took away the novelty of the subject-matter of the independent claims as intended to be maintained in accordance with the decision of the opposition division. In this respect the appellant/opponent argued that therein a valve in accordance with the maintained claims was implicitly disclosed and that also carbonated drink was implicitly disclosed.

The appellant/proprietor argued that they should not be admitted because they were not more relevant than documents already in the proceedings since they related to the dispensing of coffee as opposed to carbonated drink as claimed.

5.2 The documents were filed at the earliest possible point in the appeal proceedings, i.e. with the appeal grounds. If the arguments of the appellant/opponent were accepted then they could have affected the outcome of the proceedings.

In this respect the Board notes that a document does not have to be more relevant than the documents already in the proceedings in order to be admitted, rather it should be capable in principle of affecting the outcome of the proceedings.

The Board considers that this could be the case so that it admits the documents into the proceedings.

6. *Novelty - Main request*

6.1 The appellant argued that D11 took away the novelty of the subject-matter of each of claims 1 and 19 and that each of D14 and D15 took away the novelty of the subject-matter of claim 19.

6.2 The argument of the appellant/opponent starting from D11 relied on its opinion that the references in the claims to the flexible dispensing line were not defining a feature of the drink dispenser assembly of claim 1, or respectively of the container of claim 19.

6.2.1 In claim 1 there is specified a dispensing head "for accommodating a flexible dispensing line" and a container that is "connected during use to the flexible dispensing line". Various features of the line are specified in the claim, namely that it has a coupling element and that this coupling element comprises a

shut-off valve and that the shut-off valve can be detachably connected to an operating element. Furthermore the shut-off valve can be opened and closed when connected to the dispensing head and closed when the outlet end of the dispensing line is being placed into the dispensing head.

The expression "for accommodating" in the present case is not to be seen as merely indicating a use of the dispensing head but rather an acknowledgment of the fact that there are features of the dispensing line which are defined when in position in the dispensing head and others relating to when it is being placed in position. Also, the reference in the claim to the shut-off valve of the dispensing line being capable of being opened and closed "when it is connected to the dispensing head" is necessary since the shut-off valve has a separate capability of being closed when being placed into and removed from the dispensing head. The Board has no doubt that the dispensing line and its features are a limiting part of the subject-matter of the claim.

- 6.2.2 The situation with respect to claim 19 is even clearer since that claim specifies a "Container ... having a valve (14, 130) and a flexible dispensing line".
- 6.2.3 The argument of the appellant/opponent was based on its view that the dispensing line was not a part of the subject-matter of the independent claims and hence the shut-off valve was not a part of these. The appellant/opponent acknowledged that since such a shut-off valve was not disclosed in D11 its argument regarding lack of novelty would not succeed if the



Board was not convinced by its argument regarding the dispensing line not being part of the subject-matter of these claims. As explained above the Board has not been convinced by this argument.

- 6.3 The appellant/opponent pointed out that claim 19 did not include the dispensing head as an element of the claimed container so that features of this should not be taken into account when assessing novelty.

On this basis the appellant/opponent argued that D14 and D15 took away the novelty of the subject-matter of this claim. D14 is a US patent and D15 is a continuation thereof with essentially unchanged content so that hereinafter only D14 will be referred to.

- 6.3.1 Claim 19 requires that the container is provided with a carbonated drink. The appellant/opponent acknowledged that this was not explicitly disclosed in D14 but considered that it was implicitly disclosed since the inner container is disclosed as air-tight and gas-tight.

The Board considers that D14 does not disclose even implicitly a reference to a carbonated drink. On the contrary the teaching of the document is expressly directed to the improvement of "storage of aroma-sensitive beverages, especially of freshly brewed coffee beverages", see D14 column 1, lines 30 to 34. The references to air-tight and gas-tight must therefore be seen in the light of this object. Aroma-sensitive drinks are not necessarily carbonated. Since the main thrust of the document is towards storing coffee, which is a non-carbonated drink, it cannot be

considered that there is an implicit disclosure of a carbonated drink.

6.3.2 Thus, at least the feature of the container claim 19 of the carbonated drink is not disclosed in D14.

6.4 The subject-matter of claims 1 and 19 of this request is therefore novel in the sense of Article 54 EPC.

7. *Inventive step - Main request*

7.1 According to the appellant/opponent the closest prior art document is D11. This was not disputed by the appellant/proprietor and the Board agrees with this assessment.

The teaching of D11 includes the provision of a dispensing line in which there may be a closure device. This closure device may be provided in a coupling means 718 which is provided at the outlet of the dispensing means for coupling to a tapping device T, or preferably adjacent to or in the dispensing opening of the container which supplies the liquid into the dispensing line, see page 39, lines 23 to 32. When the closure device is in the dispensing opening it is shown in figures 9a to 9c.

The form of the closure device when it is provided in the coupling is, however, not given. It is not necessarily a valve. The purpose of the closure device is to prevent possible outflow of beverage from the container before the coupling means are connected (see page 39, lines 24 to 27) to the tapping device. The closure device could thus be just a plastic film

covering the end of the line which is punctured after the coupling means are connected to the tapping device.

7.2 According to claim 1 of the main request there is also a coupling element for connection to a dispensing head. This coupling element includes a shut-off valve which can be opened and closed for dispensing the carbonated drink. It also can be closed when the dispensing line is being placed in the dispensing head or removed therefrom.

7.3 Therefore the subject-matter of claim 1 is distinguished over the disclosure of D11 in that there is a shut-off valve in the coupling element at the outlet end of the dispensing line which can be opened and closed for dispensing the carbonated drink and can be closed when the dispensing line is being removed from the dispensing head.

The closure device in the coupling of the dispensing line of D11 is only disclosed for being closed when being placed into the dispensing head and is not disclosed as a shut-off valve.

7.4 The problems to be solved by the distinguishing features of the subject-matter of claim 1 are to simplify the construction of the dispensing device and to make the dispensing control independent of the characteristics of the dispensing line (see paragraph [0004] of the patent in suit). In D11 the valve is formed by the combination of the flexible line and the pressure roller 752, see page 43, line 12 to page 44, line 8. Further, leakage from the dispensing line

should be prevented when an empty container is removed (see paragraph [0005] of the patent in suit).

7.5 The appellant/opponent argued that this problem is solved by the valve known from D7b. It is stated in D7b that the valve disclosed therein is either used to connect a tube with a collapsible container, or to connect a tube with a rigid container or to connect a tube with another tube (see column 4, lines 27 to 31). The Board notes that these three alternative uses all concern means of connecting a tube to some source of liquid wherein the valve is itself the connecting means. The valve is in two parts, one part on each of the tubes or containers to be connected. These two parts are first locked together and then the two parts can be relatively rotated around the axis of the constituted valve to produce a relative longitudinal movement of internal elements attached to the respective parts, to allow fluid flow therethrough.

7.6 As argued, however, by the appellant/proprietor the device disclosed in D7b is therefore concerned with a different problem to that of the assembly of claim 1. The appellant/opponent offered no reasons as to why the skilled person starting from D11 would even consider that the problem to be solved could be solved by the teaching of D7b.

7.7 The appellant/opponent simply argued that the skilled person would replace the complete tapping movement of D11 by the rotationally actuated valve movement known from D7b. It did not give any reasons why it would do this, in particular why the skilled person would turn to a connecting device for tubes in order to solve a

problem in a part of a dispensing line which is not itself the coupling element with a further tube.

Further, it would require a complete re-design of the operating element, from rotating movement around the axis orthogonal to the dispensing line, to a rotating movement around the axis. The existing tapping mechanism of D11 does not allow a ready-to-apply conversion of the movement.

- 7.8 The Board concludes therefore that the skilled person would not have turned to D7b in order to seek a solution to these problems.
- 7.9 Although claim 19 does not include the dispensing head as part of the claim it does require that the shut-off valve can be opened and closed and that it is closed when it is being placed into or removed from a dispensing head. Therefore the same arguments apply to this claim as applied to claim 1.
- 7.10 Therefore, the subject-matter of each of claims 1 and 19 of the main request involves an inventive step in the sense of Article 56 EPC.
8. As the independent claims of the main request are allowable, the auxiliary requests need no further discussion.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of:
  - claims 1 to 29 of the main request filed during the oral proceedings;
  - amended columns 1 to 4 of the description of the main request filed during the oral proceedings and columns 5 to 13 of the description of the patent as granted; and
  - figures 1 - 13 of the patent as granted.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders