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Datasheet for the decision of 17 December 2013

Case Number: T 1941/10 - 3.2.07

Application Number: 01938819.8

Publication Number: 1289874

IPC: B67D1/08, B67D1/06, B67D1/14, B29C45/17

Language of the proceedings: EN

Title of invention:
BEVERAGE TAPPING DEVICE

Patent Proprietor:
Heineken Supply Chain B.V.

Opponent:
Carlsberg Breweries A/S

Headword:

Relevant legal provisions:
EPC Art. 123(2), 56, 54, 84, 83, 114(1)
RPBA Art. 13(1)

Keyword:
Amendments - added subject-matter (no)
Claim 1 - clarity after amendment (yes)
Sufficiency of disclosure - after amendment (yes)
Novelty - (yes)
Late-filed document - admitted (yes)
Late-filed argument - admitted (yes)
Inventive step - (yes)

Decisions cited:

Catchword:

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Case Number: T 1941/10 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 17 December 2013

Appellant: (Patent Proprietor)	Heineken Supply Chain B.V. Tweede Weteringplantsoen 21 1017 ZD Amsterdam (NL)
Representative:	Prins, Adrianus Willem V.O. Johan de Wittlaan 7 2517 JR Den Haag (NL)
Respondent: (Opponent)	Carlsberg Breweries A/S Ny Carlsberg Vej 100 1760 Copenhagen V (DK)
Representative:	Nielsen, Henrik Sten Budde Schou A/S Hausergade 3 1128 Copenhagen K (DK)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 15 July 2010 revoking European patent No. 1289874 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
E. Kossonakou

Summary of Facts and Submissions

I. The appellant (patent proprietor) lodged an appeal against the decision of the opposition division revoking the European patent No. 1 289 874.

II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step), on Article 100(b) EPC (insufficient disclosure) and on Article 100(c) EPC (unallowable amendments).

III. The opposition division found in a first decision dated 2 July 2007 that the grounds of opposition under Articles 100(a) and 100(c) EPC did not prejudice the maintenance of the patent as granted and rejected the opposition.

IV. With its decision T 477/07 the Board of Appeal (in a different composition), reacted to the new situation occasioned by new evidence furnished by the opponent in the form of documents D11 (US 3889487 A) and D12 (US 2377261 A) by remitting the case to the department of first instance for further prosecution.

V. The opposition division found on remittal that the subject-matter of claim 21 of the patent as granted (main request) is not novel over D20 (DE 7916347 U - filed after the remittal by the Board), that the two independent apparatus claims 1 and 32 of the new first auxiliary request contravene the requirements of Article 84 EPC in combination with Rule 43(2) EPC and that independent claim 21 according to the new second auxiliary request does not comply with the requirements of Article 123(2) EPC.

VI. Oral proceedings before the Board took place on 17 December 2013.

At the beginning of the oral proceedings the appellant requested that the decision under appeal be set aside and the contested European patent maintained on the basis of the "new main request" or one of the "new" first to sixth auxiliary requests, all of them filed with letter dated 18 November 2013. In this respect it requested that the independent claims of each request be considered individually as to whether they fulfil the EPC requirements, clarifying that these requests were intended to cover all possible combinations of the independent claims. It also requested that document D20 not be admitted into the proceedings.

The respondent (opponent) requested that the appeal be dismissed. It further requested that the appellant's requests filed with letter dated 18 November 2013 not be admitted in the appeal proceedings. Should they be admitted, they should be considered request by request, each in its entirety and not as individual independent claims. It further requested that document D20 be admitted in the proceedings.

The matter was then discussed with the parties starting with the admissibility of the appellant’s new requests. After the Board’s deliberation and the resulting admittance of these requests, the amendment in claim 1 of the “new main request” was discussed in respect of the requirements of Articles 123(2), 83 and 84 EPC and considered by the Board to be in compliance. Then was discussed the admissibility of D20, which was admitted. The next issue addressed was whether claims 21 and 26 of the “new main request” fulfil the requirements of Articles 54 and 56 EPC in light of the teaching of D20

and what a skilled person would do to execute that teaching. The subject-matter of both was considered to be obvious. After resolving the issue that D6 could be referred to in the present proceedings, claim 1 of the main request was discussed in respect of the requirements of Article 56 EPC in the light of the combined teachings of D20 and D6 or D12. The Board considered its subject-matter not obvious. Regarding claim 21 of the "new" first auxiliary request the respondent raised objections against the unclear meaning of "a valve body" and thus saw no possibility to argue lack of inventive step in the matter. Regarding claim 26 of the "new" second auxiliary request the respondent declared having no objections under Articles 123(2), 83 and 84 EPC while having the same arguments against inventive step as presented in respect of claim 1 of the "new main request".

VII. Final requests

At the end of the oral proceedings the appellant filed its sole request with claims 1 to 27 and an amended description replacing all its previous requests and requested the maintenance of the European patent on the basis of said new request, whereby the respondent confirmed its request for dismissal of the appeal.

VIII. Independent claims 1, 21 and 24 of the new request filed during the oral proceedings read as follows (amendments over the corresponding claims 1, 21 and 26 of the patent as granted are marked in bold or struck through):

"1. A tapping device (1) for beverage, comprising a cooling system (4) and a tapping rod (8) with a tapping cock (14), characterized in that, the tapping rod (8) comprises a first (50) and a second channel (52), which

channels (50, 52) are in fluid communication with each other adjacent the tapping cock (14), while at least during use a tapping line (48) extends through the second channel (52) forming a guide tube (16), **wherein at least the part of the tapping line extending in the guide tube is a flexible hose**, which tapping line (48) is or can be coupled at one end with a container (6) for beverage and at the other end can cooperate with the tapping cock (14), the guide tube (16) and the tapping line (48) being so designed that the tapping line (48) can be led into the guide tube (16) from a lead-in end of the guide tube (16) and can be passed through the guide tube (16) into the tapping cock (14), to be coupled thereto such that during use contact is avoided between fluid to be dispensed and the tapping device other than contact of the fluid with said tapping line (48)".

"21. A tapping device (1) comprising a tapping rod (8) with a tapping cock (14) and a tapping line (48), the tapping line being at least partly of flexible design, the tapping rod comprising a guide tube (16) having a first end (18) terminating adjacent the tapping cock and having an opposite, second end (20) terminating near, at least beyond, an end of the taping rod, ~~characterised in that~~ **wherein** said second end is arranged for introducing a first end (58) of the tapping line, such that this first end can be passed through the guide tube to the tapping cock, the second end of the tapping line being adapted to be coupled with a container (6) for beverage and the first end of the tapping line being capable of cooperating with the tapping cock, **wherein the tapping line, adjacent the first end, comprises a valve body capable of cooperating with the tapping cock, such that through operation of the tapping cock the valve body can be**

moved between an open position and a closed position".

"24. A method for arranging a tapping device (1), in particular according to any one of the preceding claims, wherein a tapping rod (8) with at least one guide tube (16) extending therethrough, ~~characterised in that~~ **wherein** the method includes the step of providing a tapping cock (14) connected to the guide tube, the tapping rod (8) with the at least one guide tube (16) being mounted on the upper side of a tapping platform (2), such that the tapping rod and the guide tube extend to a point under the tapping platform, at least are accessible from there; wherein a fluid communication is formed between an open end of the guide tube located under the tapping platform and an open end, likewise located under the tapping platform, of a first channel (50) formed between the guide tube and the tapping rod and surrounding the guide tube at least partly, which fluid communication is formed via the guide tube and the first channel, mutually coupled in, at least near, the tapping cock; wherein a tapping line is positioned in the guide tube, from said open end thereof at least to a point adjacent the tapping cock, which tapping line is coupled to the tapping cock, for cooperation therewith, **wherein an at least partly flexible hose is used as tapping line, which is introduced from the open end of the guide tube and is passed through the guide tube into the tapping cock, and the hose is laid in the tapping cock, for cooperation with an operating mechanism of the tapping cock, wherein a hose is used having, adjacent the leading end, a valve, which valve is coupled with the operating mechanism, such that the valve can be opened and closed with the operating mechanism".**

IX. The appellant argued as follows:

a) The appellant's requests filed with letter dated 18 November 2013 represent the appellant's reaction to the preliminary opinion of the Board expressed in the annex to the summons to oral proceedings and should thus be admitted into the proceedings.

b) These requests should be considered by the Board for each of their individual independent claims since the appellant intends to combine them with each other in the respective allowable version.

c) Document D20 should not be admitted into the appeal proceedings since it is not *prima facie* relevant. Furthermore, the opposition division did not deal at all with the issue of the late filing of said document.

d) Since D6 (WO 99/11561 A) has not been used by the respondent in the written part of the present appeal proceedings for questioning lack of inventive step, its present use in the oral proceedings is a late amendment of the respondent's case, which should not be admitted.

e) The introduction into claim 1 of the new request of the feature "at least the part of the tapping line extending in the guide tube is a flexible hose" on its own and not in combination with the second part of claim 11 as originally filed does not contravene the requirements of Articles 123(2), 83 and 84 EPC.

f) The features of claim 1 according to the new request that the guide tube and the tapping line are "so designed that the tapping line can be led into the guide tube from a lead-in end of the guide tube and can be passed through the guide tube into the tapping cock, to be coupled thereto such that during use contact is avoided between fluid to be dispensed and the tapping device other than contact of the fluid with said tapping line" are not known from D20 and the combination of the teachings of documents D20 and D12 or D20 and D6 does not render the subject-matter of claim 1 according to said request obvious.

g) The features of the tapping device of claim 21 according to the new request that "the tapping line, adjacent the first end, comprises a valve body capable of cooperating with the tapping cock, such that through operation of the tapping cock the valve body can be moved between an open position and a closed position" are not present in the tapping device known from D20 nor are they known from any other document present in the appeal proceedings. Therefore, the subject-matter of claim 21 according to said request involves an inventive step.

h) The features of the method claim 24 according to the new request that the flexible hose used as tapping line has, "adjacent the first end, a valve, which valve is coupled with the operating mechanism of the tapping cock, such that the valve can be opened and closed with the operating mechanism" of the tapping cock are not present in the method known from D20 nor are they known from any other document present in the appeal

proceedings. Therefore, the subject-matter of claim 24 according to said request involves an inventive step.

X. The respondent argued as follows:

a) The appellant's requests filed with letter dated 18 November 2013 are late filed and *prima facie* not allowable. They could also have been filed during the opposition proceedings. They should not be admitted into the appeal proceedings.

b) These requests should be treated by the Board as a whole and not as a collection of individual independent claims, each to be discussed separately.

c) Since the opposition division exercised its discretion correctly by admitting D20 into the opposition proceedings it cannot be excluded from the appeal proceedings.

d) The respondent was confronted with an amended claim 1 in the main request filed with letter dated 18 November 2013, i.e. less than one month before the present oral proceedings. Since it was admitted into the proceedings at the oral proceedings, the respondent should be allowed to present lack of inventive step arguments based *inter alia* on the teaching of D6.

e) Due to the omission in the amendment to claim 1 according to the new request of the second part of claim 11 as originally filed, namely of the expression "adapted to be coupled to the tapping cock", an unallowable intermediate generalisation

has occurred.

f) Due to the above-mentioned omission in claim 1 according to the new request it is unclear how the coupling between the tapping line and the tapping cock takes place. This leads to a lack of clarity in claim 1 and a lack of sufficient disclosure of its subject-matter.

g) The combination of the teachings of D20 and D12, but also the combination of the teachings of D20 and D6 renders the subject-matter of claim 1 according to the new request not inventive.

h) The respondent not understanding the meaning of the feature "valve body" claimed in claim 21 according to the new request, it sees no possibility to argue lack of inventive step, since no such "valve body" can be found in the documents present in the appeal proceedings.

i) Since the tapping line - valve – tapping cock relationship claimed in claim 24 according to the new request cannot be found in the documents present in the appeal proceedings the respondent sees no possibility to argue lack of inventive step.

Reasons for the Decision

1. *Procedural matters*

1.1 The appellant's final sole request labelled new request and filed at the oral proceedings has three independent claims. Compared with the requests filed with letter dated 18 November 2013 claim 1 is identical with claim

1 according to the new main request, claim 21 is identical with claim 21 according to the new first auxiliary request, and claim 24 is identical with claim 26 according to the new second auxiliary request, with a replacement of "characterized in that" by "wherein".

1.2 The present decision will deal with the issues, where necessary and insofar as relevant, in the order they were dealt with at the oral proceedings, see point VI above.

2. *Admittance of the appellant's requests filed with letter dated 18 November 2013 into the appeal proceedings*

2.1 In its statement setting out the grounds of appeal the appellant requested to set aside the decision under appeal and to maintain the patent as granted (main request) or to maintain the patent with the claims according to one of the first to sixth auxiliary requests filed together with said statement.

2.2 In its annex to the summons to oral proceedings the Board informed the parties of its preliminary opinion, setting out its objections and/or the topics to be discussed in respect of the appellant's then valid requests.

2.3 With its letter dated 18 November 2013 the appellant, in reaction to said preliminary opinion of the Board, see page 2, first paragraph of said letter, filed an amended main request labelled new main request and amended first to sixth auxiliary requests. It further presented arguments in favour of allowability of said amended requests.

2.4 The respondent argued that the requests filed with letter dated 18 November 2013 are late filed, *prima facie* not allowable and should have been filed earlier, during the opposition proceedings. For these reasons they should not be admitted into the appeal proceedings.

2.5 The Board notes that the independent claims of the appellant's requests filed with its letter dated 18 November 2013 are a combination of the independent claims which had been filed during the opposition proceedings, see letter dated 25 May 2010. In several of those claims amendments were made in the light of the above-mentioned preliminary opinion of the Board and the contentious issue of plural independent claims was addressed. The Board considers that the filing of said requests together with the corresponding arguments presents an at least arguable case on the part of the appellant, sufficient for a *prima facie* allowability of said requests.

2.6 According to Article 13(1) RPBA any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion, which shall be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

2.7 The Board does not recognise any complexity in the amendments made in these requests, nor did the respondent raise corresponding objections. The Board considers further that said requests *prima facie* resolve a number of issues created by the decision (refusing plural independent claims in the requests by an incorrect application of Rule 43(2) EPC and

addressed by the Board in its annex to the summons). The independent claims also address in a straightforward manner the issues with inventive step. Finally, given the fact that the present case has already been decided twice by the opposition division, see points III and V above, the Board considers that the admission of these requests into the appeal proceedings also satisfies the need for procedural economy.

2.8 For these reasons, the Board exercises its discretion according to Article 13(1) RPBA in favour of the appellant and admits these requests into the appeal proceedings.

3. *Treatment of the individual independent claims of the appellant's requests, each as such*

The Board adheres to the established principle that a request can be dismissed as a whole if one of the independent claims is not allowable. However, in this particular case the appellant has indicated that its requests are to be seen also as proposing alternative wordings for each of the independent claims. This is why after the dismissal of claims 21 and 26 of the new main request of 18 November 2013 at the oral proceedings, the discussion continued with claim 1 of that same request and not with the further limited version of that claim as per the new first auxiliary request. The same procedure was followed for claim 21 of the new first auxiliary request and claim 26 of the new second auxiliary request. See in this respect point VI above. Instead of having to deal with an unnecessarily complicated number of auxiliary requests the Board exercised its discretion in how it deals with

requests, in this manner.

4. *Admittance of D20 into the proceedings*

4.1 D20 was filed only one month before the oral proceedings before the opposition division, therefore the latter had discretion to admit it or not. The Board only reviews this exercise of discretion as to whether it was performed according to the principles established by the case law, see Case Law of the Boards of Appeal, 7th edition 2013, IV.E.3.6.

4.2 The Board cannot find fault in the exercise of discretion by the opposition division, which found D20 *prima facie* relevant.

4.3 D20 presents an at least arguable case of lack of novelty of the subject-matter of claim 21 of the patent as granted. In fact, the opposition division found that the tapping device according to claim 21 is not novel over D20.

4.4 Furthermore, the Board cannot follow the argument of the appellant that the opposition division did not deal with the late filing of said document. According to page 2, paragraphs 9 to 12 of the minutes of the oral proceedings the opposition division admitted D20 into the proceedings after having discussed the *prima facie* relevance of said document with the parties. Also in the first sentence of point 2 of the decision the opposition division states that "[a]n important factor in the evaluation of late-filed evidence is the relevance of that evidence and its bearing on the decision to be taken". Accordingly, the opposition division did deal with the late filing of said document

both during the oral proceedings and in its decision.

5. *Amendment to the respondent's case by arguing lack of inventive step based inter alia on the teaching of D6*

5.1 The appellant argued that since D6 has not been used by the respondent in the written part of the present appeal proceedings for questioning lack of inventive step of the subject-matter of claim 1 of the patent as granted the Board should not allow it now, for the first time in the proceedings, to present arguments concerning lack of inventive step based *inter alia* on the teaching of D6.

5.2 The respondent argued that it was confronted with a claim 1 filed as main request, which was amended with respect to claim 1 of the patent as granted. It was filed with letter dated 18 November 2013, i.e. less than one month before the oral proceedings. Since the request was admitted into the proceedings only in the oral proceedings, the respondent should be allowed to present lack of inventive step arguments based *inter alia* on the teaching of D6. This document had already been filed together with the notice of opposition and had been used for arguing lack of inventive step against the subject-matter of claim 1 of the patent as granted during the opposition proceedings. D6 should thus be admitted into the appeal proceedings.

5.3 The Board notes that the respondent in its reply to the grounds of appeal has argued lack of inventive step of the subject-matter of claim 32 of the then first auxiliary request and of claim 2 of the then second auxiliary request by using the combination of the teachings of documents D20 and D6, see page 8, penultimate paragraph and page 9, last paragraph. D6 is

thus as such part of the appeal proceedings. With those claims the issue was the valve in the tapping line which was cooperating with the tapping cock (claim 32) or which was laid in the divisible tapping cock housing (claim 2). D6 was cited against this feature of those claims, since it showed - according to the respondent - also a type of a valve in a tapping line which cooperated with a (divisible) tapping cock, by being a flexible hose being pinched closed by a tapping cock.

5.4 Since claim 1 has been amended such that the tapping line is a **flexible hose**, which according to the amended rest of the claim is passed into the tapping cock, the Board finds the respondent's argument more than reasonable.

The Board finds also that the respondent's arguments do not introduce new issues or make the subject-matter more complex. The Board finds further that the state of the proceedings and the need for procedural economy do not speak against the admittance of the respondent's arguments.

5.5 The Board exercising its discretion according to Article 13(1) RPBA therefore allows the respondent to argue lack of inventive step based *inter alia* on the teaching of D6.

6. *New request*

6.1 Claim 1: Amendments - Article 123(2) EPC

6.1.1 In claim 1 of the patent as granted the feature of claim 14 as originally filed that "the guide tube and the tapping line being so designed that the tapping line can be led into the guide tube from a lead-in end

of the guide tube and can be passed through the guide tube into the tapping cock, to be coupled thereto" has been introduced during the examination proceedings.

6.1.2 The Board considered that when reference was made in the application as originally filed to the tapping line being "led in" and "passed though" the guide tube as claimed in claim 1 of the patent as granted, this disclosure required that at least the part of the tapping line extending in the guide tube was a flexible hose, see point 3 of the annex to the summons to oral proceedings.

6.1.3 The appellant, in reaction to this, introduced into claim 1 of the new request the feature that "wherein at least the part of the tapping line extending in the guide tube is a flexible hose", said feature being present in claim 11 as originally filed.

6.1.4 The respondent argues that due to the omission of the second part of this claim 11, namely the expression "adapted to be coupled to the tapping cock", an unallowable intermediate generalisation has occurred. Claim 11 created a relationship between these features in that the coupling to the tapping cock is due to the flexibility of the hose extending in the guide tube.

6.1.5 The Board notes firstly that claim 1 according to the new request already includes the feature that the tapping line is so designed that it can be passed into the tapping cock, to be coupled to the tapping cock. The Board notes further that when assessing the allowability of the introduction of the feature "at least the part of the tapping line extending in the guide tube is a flexible hose" into claim 1 the whole disclosure of the originally filed application has to

be taken into consideration, not only the wording of claim 11 as originally filed.

6.1.6 According to page 5, lines 3 to 16 of the originally filed application the use of an at least partly flexible hose as tapping line facilitates the tapping line being led into and passed through the guide tube, into the tapping cock. According to page 5, lines 21 to 28 of the originally filed application in the tapping device according to the present invention the tapping cock is so designed that it can either squeeze the flexible part of the tapping line shut or, preferably, that it can cooperate with a valve included in the tapping line.

6.1.7 Accordingly, only if a "hose cock" as described on page 5, lines 21 to 25 is used there exists a functional relationship between the flexibility of the tapping line and the coupling between the tapping line and the tapping cock. If the – preferred - valve is used, there is not necessarily a need for a flexible tapping line.

6.1.8 For the above-mentioned reasons the Board finds that the introduction into claim 1 of the new request of the feature "at least the part of the tapping line extending in the guide tube is a flexible hose" by itself, without the second part of claim 11 as originally filed, does not contravene the requirements of Article 123(2) EPC.

6.2 *Claim 1: Clarity – Article 84 EPC*

6.2.1 According to claim 1 of the patent as granted the tapping line is so designed that it can be coupled to the tapping cock. There is no mentioning in said claim of any specific part (flexible or not) of the tapping

line which was coupled to the tapping cock.

6.2.2 The Board cannot see why the introduction into claim 1 of the feature "at least the part of the tapping line extending in the guide tube is a flexible hose" without any further mentioning of a specific part (flexible or not) of the tapping line for its coupling with the tapping cock renders said claim unclear, especially in the light of the information disclosed in paragraph [0018] of the patent in suit referring to two specific coupling possibilities between the tapping line and the tapping cock, namely the use of the tapping line as a hose cock pinched by the tapping cock, or the use of a valve included in the tapping line, which is passed into the tapping cock.

6.2.3 The Board finds thus that claim 1 according to the new request meets the requirements of Article 84 EPC.

6.3 *Claim 1: Insufficiency of disclosure – Article 83 EPC*

For the same reasons as mentioned in point 6.2 above, the Board cannot see why the introduction into claim 1 of the feature "at least the part of the tapping line extending in the guide tube is a flexible hose" without any further mentioning of a specific part (flexible or not) of the tapping line for coupling it with the tapping cock results in an insufficient disclosure of the claimed invention, particularly in the light of the information disclosed in paragraph [0018] of the patent in suit.

6.4 *Claim 1: Novelty – Article 54 EPC*

The features of claim 1 that the guide tube and the tapping line are "so designed that the tapping line can

be led into the guide tube from a lead-in end of the guide tube and can be passed through the guide tube into the tapping cock, to be coupled thereto such that during use contact is avoided between fluid to be dispensed and the tapping device other than contact of the fluid with said tapping line" are not known from D20.

This was not disputed by the respondent.

The subject-matter of claim 1 is therefore new and the requirements of Article 54 EPC are met.

6.5 *Claim 1: Inventive step – Article 56 EPC*

6.5.1 The features of claim 1 mentioned under point 6.4 have the effect of preventing contamination of the beverage through contact with the tapping cock, see paragraph [0018] of the patent in suit.

6.5.2 The respondent argues in a first argumentation line that the person skilled in the art seeking to prevent contamination of the beverage in the tapping device known from D20 would take into consideration the teaching of D12, the latter referring to the prevention of contamination of the beverage on page 1, right column, lines 33 to 41. D12 teaches the introduction of the free sealed end of the flexible tube 22 through the tubular member 27 into the valve body 32, said valve being operated by the operating handle 48, see page 4, left column, lines 18 to 28. To solve this problem, the skilled person would incorporate said features known from D12 into the tapping device known from D20 and would thus arrive at the tapping device according to claim 1 without exercising an inventive activity.

6.5.3 The Board cannot follow the respondent's arguments for the following reasons:

D20 and D12 are directed to two different systems for leading beverage into the corresponding tapping cock. D20 uses pressurised conditions for pumping the beverage (beer) upwards into the tapping cock, whereby in D12 the beverage (milk) is fed by gravity into the tapping cock. Furthermore, the tapping line (flexible tube 22) known from D12 is filled with beverage during insertion through tubular member 27 into the valve body 32. Such a structural feature's constellation is not applicable to the tapping device known from D20, said last working under pressurised conditions and necessitating that the tapping line is free from beverage when passing through the guide tube and the tapping cock. Finally, D12 is a teaching from 1945. For the above reasons the skilled person would not take account of the teaching of D12 when working on a solution for the tapping device of D20 in 2000.

6.5.4 The respondent argues in a second argumentation line that the person skilled in the art seeking to prevent contamination of the beverage in the tapping device known from D20 would take into consideration the teaching of D6, the latter also referring to the prevention of contamination of the beverage on page 7, lines 12 to 16. D6 discloses a tapping device 6 constituting a "hose cock", since the hose clamp 52 may completely squeeze shut the flexible hose 34, see page 7, lines 8 to 21. The skilled person seeking to solve the problem would simply replace the tapping cock 15 in the tapping device known from D20 by the tapping device 6 of D6 and would arrive at the tapping device according to claim 1 without exercising an inventive

activity.

6.5.5 The Board cannot follow the respondent's second argumentation line for the following reasons:

D6 shows in figures 1 and 7 to 10 a tapping device 6 for a beverage comprising a tapping line 34, 46 constituted by the beverage delivery hose 34 and the right-angled outlet pipe 46, the latter being guided through a vertical guide channel 47 in the tapping head and having an end portion 46a to dispense beverage. This known tapping device 6 does not comprise a tapping rod with a tapping cock as claimed in claim 1 but a substantially rectangular housing 4 of the tapping cock constituted by lower and upper parts 41, 42 hingeably connected to each other. For inserting the tapping line 34, 36 into the tapping device 6 the upper part 42 is rotated around the hinge 43 and the tapping line 34, 46 is laid into the tapping device 6 from above. Thus, even considering that the grooves 44, 45 define a guide tube, there is no teaching to be found in D6 that the guide tube and the tapping line are "so designed that the tapping line can be led into the guide tube from a lead-in end of the guide tube and can be passed through the guide tube", as required by claim 1 and present in the tapping device of D20. Moreover, the Board follows the appellant's argument that the application of the teaching of D6 to the tapping device known from D20 would require either complete additional design for the tapping cock of D20 or a replacement of the tapping rod with the tapping cock 15 of D20 by the tapping device 6 of D6. The latter would mean that the first and second channels being in fluid communication with each other adjacent the tapping cock, as comprised in the tapping rod of D20, would no longer be present. This would result in dispensing with the cooling of the tapping

line, an essential feature of the tapping device of D20. As a result, the skilled person would not contemplate the combination of the teachings of D20 and D6.

6.5.6 For the above-mentioned reasons the subject-matter of claim 1 involves an inventive step and the requirements of Article 56 EPC are met.

6.6 *Claim 21: Novelty – Article 54 EPC*

The features of the tapping device according to claim 21 that "the tapping line, adjacent the first end, comprises a valve body capable of cooperating with the tapping cock, such that through operation of the tapping cock the valve body can be moved between an open position and a closed position" are not present in the tapping device known from D20.

This was not disputed by the respondent.

The subject-matter of claim 21 is thus new and the requirements of Article 54 EPC are met.

6.7 *Claim 21: Inventive step – Article 56 EPC*

6.7.1 The tapping device according to claim 21 differs from the tapping device known from D20 at least through the above-mentioned valve body comprised in the tapping line, see point 6.6 above.

6.7.2 The Board understands in the context of claim 21 the above-mentioned feature "valve body" as defining the movable part of a valve, which closes off and opens up the passage of fluid. At least said part of the valve is comprised in the tapping line. Since the tapping

cock cooperates with said valve body comprised in the tapping line, said last being the conduit for the beverage, this differentiating feature has the effect of preventing contact between the tapping cock itself and the beverage, i.e. preventing contamination of the beverage through contact with the tapping cock, see paragraph [0018] of the patent in suit.

6.7.3 The technical problem solved by said feature is thus the prevention of contamination of the beverage in the tapping device by the tapping cock.

6.7.4 As it was acknowledged by the respondent none of the documents present in the appeal proceedings discloses such a feature. The skilled person seeking to solve the above-mentioned problem cannot therefore find any teaching in the prior art, leading him towards the above-mentioned feature of claim 21, neither does such a teaching result from application of his general technical knowledge.

6.7.5 The Board is thus satisfied that the subject-matter of claim 21 involves an inventive step (Article 56 EPC).

6.8 *Claim 24: Novelty – Article 54 EPC*

The features of the method claim 24 that the at least partly flexible hose used as tapping line has, "adjacent the first end, a valve, which valve is coupled with the operating mechanism of the tapping cock, such that the valve can be opened and closed with the operating mechanism" of the tapping cock is not present in the method known from D20.

This was not disputed by the respondent.

The subject-matter of claim 24 is thus new and the requirements of Article 54 EPC are met.

6.9 *Claim 24: Inventive step – Article 56 EPC*

6.9.1 The method according to claim 24 differs from the method known from D20 at least through the above-mentioned tapping line - valve – tapping cock relationship, see point 6.8 above.

6.9.2 Since the operating mechanism of the tapping cock cooperates with said valve comprised in the tapping line, said last being the conduit for the beverage, the above-mentioned differentiating feature has the effect of preventing contact between the tapping cock and the beverage, i.e. preventing contamination of the beverage through contact with the tapping cock itself, see paragraph [0018] of the patent in suit.

6.9.3 The technical problem solved by said feature is thus the prevention of contamination of the beverage in the tapping device by the tapping cock.

6.9.4 As it was acknowledged by the respondent none of the documents present in the appeal discloses such a feature. The skilled person seeking to solve the above-mentioned problem cannot therefore find any teaching in the prior art, leading him towards the above-mentioned feature of claim 24, neither does a relevant teaching result from application of his general technical knowledge.

6.9.5 The Board is thus satisfied that the subject-matter of claim 24 involves an inventive step (Article 56 EPC).

6.10 *Amended description*

6.10.1 The appellant filed new description pages 2 to 10 in order to take account of the introduction of D20 into the proceedings and of the amendments in the independent claims of the new request.

6.10.2 The following amendments were undertaken in the following paragraphs:
acknowledgement of D20: [0004];
deletion of the reference to claim 11 of the patent as granted: [0016];
adaptation to the fact that claim 21 is in the one-part form: [0022];
adaptation to the fact that claim 24 is in the one-part form: [0024];
adaptation to the fact that the tapping line is defined in the claims as being at least partly flexible, to be fed into/through the guide tube and thus not being "arranged fixedly": [0031];
adaptation to the fact that the tapping line is not arranged fixedly in a divisible tapping rod but is now claimed as being (designed to be) fed through the guide tube: [0053], lines 31 — 33;
adaptation to the fact that the tapping line is according to the claims fed through the guide tube to or into the tapping cock, for cooperation therewith, which excludes the tapping line from being laid into a tapping rod: [0053], lines 40 — 44; and
adaptation to the fact that the tapping cock has to cooperate with the tapping line, either for forming a hose cock or through a valve (body) and thus will not be "conventional": [0053], lines 49 — 50.

6.10.3 The respondent did not raise any objections against these amendments to the description, nor does the Board

see any reason speaking against their allowability.

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 as amended in the following version:

   claims 1 to 27 filed as new request in the oral proceedings;

   description pages 2 to 10 filed in the oral proceedings;

   figures 1 to 13 of the patent specification.

The Registrar: The Chairman:

G. Nachtigall H. Meinders

Decision electronically authenticated