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**Datasheet for the decision
of 15 October 2013**

Case Number: T 2016/10 - 3.2.07

Application Number: 01938828.9

Publication Number: 1284920

IPC: B67D1/14, B67D1/08, B67D1/04

Language of the proceedings: EN

Title of invention:
DRINKS DISPENSING DEVICE WITH A REMOVABLE HANDLE

Patent Proprietor:
Heineken Supply Chain B.V.

Opponent:
Carlsberg Breweries A/S

Headword:

Relevant legal provisions:
EPC Art. 84

Keyword:
Claims - clarity - main request (no)
Claims - clarity - auxiliary request (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 2016/10 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 15 October 2013

Appellant: Heineken Supply Chain B.V.
(Patent Proprietor) Burgemeester Smeetsweg 1
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Respondent: Carlsberg Breweries A/S
(Opponent) Ny Carlsberg Vej 100
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Representative: Nielsen, Henrik Sten
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 29 July 2010
revoking European patent No. 1284920 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. 1 284 920.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC on the grounds of lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC), on Article 100(b) EPC (insufficient disclosure; Article 83 EPC) and on Article 100(c) EPC (unallowable amendments; Article 123(2) EPC).
- III. The opposition division found that the new main request filed during the oral proceedings did not *prima facie* comply with the provisions of Article 123(2) EPC . It decided not to admit said new main request into the proceedings and revoked the patent in suit.
- IV. Oral proceedings before the Board took place on 15 October 2013.
 - a) The appellant requested that the decision under appeal be set aside and the contested patent maintained on the basis of the claims of either the main or the auxiliary request filed with its letter of 23 August 2013.
 - b) The respondent (opponent) requested that the appeal be dismissed.
- V. Claim 1 of the main request is identical with claim 1 of the auxiliary request and reads as follows (amendments over claim 1 of the patent as granted are marked in bold or struck through):

"Drinks dispensing device (1, 25) provided with a cooling chamber (3, 26) having a wall, an opening for receiving a drinks container, a shut-off valve, which is hingedly connected to the wall, for the purpose of shutting off the opening, and a tap head (18, 29), which is connected to the cooling chamber (3, 26), for receiving a shut-off ~~member~~ **valve** (19, 32) in a removable dispensing line (17, 28) of a drinks container (15, 27) which has been positioned in the cooling chamber, the tap head comprising a displacement member (45, 98), a seat (42, 91) connected to the displacement member and a handle (33, 93) connected to the seat, characterized in that the handle (33, 93) can be removed from the seat by a user, it being impossible or at least difficult for a user to move the displacement member (45, 98) by hand without a handle, wherein the handle (33, 93, 112) is provided with a connecting member (51', 91', 113), the seat (42, 91) comprising a transverse axis about which said handle, in use, is rotated in order to dispense drink and a connecting bore (115) for releasably receiving the connecting member (51', 91', 113), **wherein a pin (116) is connected to the seat, the pin and having the connecting bore (115)) (sic) at the end of the pin (116), wherein the connecting member (51', 91', 113) in the vicinity of or below the surface of the pin (116) connected to the seat, acts on the latter and which** engages with the **connecting** bore via an O-ring (114) and/or via a screw thread (113) on said connecting member".

VI. The appellant argued as follows:

*Claim 1 of the main and the auxiliary request -
Clarity, Article 84 EPC*

The seat 42, 91 is connected to the displacement member 45, 98, whereby the latter controls the opening and closing of the shut-off valve 19, 32. The connecting member 113 is connected via the pin 116 to said displacement member. Thus, the connecting member is connected via the pin and the displacement member to the seat. When the connecting member rotates and acts on the displacement member it acts accordingly also indirectly on the seat.

Furthermore, the side opening of the seat through which the pin is guided for being connected to the displacement member is used as support for the rotation of the pin and for preventing the pin from releasing its connection with the displacement member along the transversal axis. Thus, again the connecting member acts via the pin on the side opening of the seat and thus eventually on the seat.

For the above-mentioned reasons the feature of claim 1 that the connecting member acts on the seat is clear to the person skilled in the art and thus claim 1 meets the requirements of Article 84 EPC.

VII. The respondent argued as follows:

*Claim 1 of the main and the auxiliary request -
Clarity, Article 84 EPC*

The additional feature of claim 1 that "the connecting member ... connected to the seat, acts on the latter" is unclear and renders claim 1 of both requests unclear.

Reasons for the Decision

1. *Claim 1 of the main and the auxiliary request - Clarity, Article 84 EPC*
- 1.1 Claim 1 of the main and the auxiliary request discloses over claim 1 of the patent as granted *inter alia* the additional feature that "the connecting member ... connected to the seat, **acts** on the latter" (emphasis added by the Board), i.e. that the connecting member acts on the seat. Said added feature was present in claim 2 as originally filed but it was no longer present in any of the claims of the patent as granted. Thus, claim 1 being amended by the above-mentioned additional feature has to fulfil *inter alia* the requirements of Article 84 EPC.
- 1.2 The Board considers, in agreement with the appellant, that claim 1 of the main and the auxiliary request has been restricted over claim 1 of the patent as granted so that it encompasses the tap head embodiments depicted in figures 5 and 6 of the patent in suit only in combination with the releasable handle depicted in figure 8 of the patent in suit.
- 1.3 According to this embodiment's constellation the shut-off valve 19, 32 is operated by the rotating handle 112. The handle is connected via its connecting member 113 and via the pin 116 to the displacement member 45, 98. In order to be connected and to act on the displacement member the pin has a flattened distal part. The pin 116 is thus connected with said flattened part to the displacement member, whereby the pin's cylindrical part may rotate within the side opening of the seat. The displacement member is capable of actuating the shut-off valve 32, 102 for controlling

the liquid flow, see page 8, line, 15 to 19 and page 9, lines 22 to 26 of the PCT-publication of the application underlying the present patent. Thus, the connecting member is connected via the distal part of the pin to the displacement member and acts on the latter. Since the displacement member is a movable member of the tap head which on the one hand is connected to the seat but on the other hand is not identified in the patent in suit as being an integral part of the seat, the acting of the connecting member on the displacement member cannot be considered as being at the same time an acting of the connecting member on the seat, as was argued by the appellant.

- 1.4 Given the fact that the seat 42, 91 is the lower, immovable part of the tap head depicted on figures 5 and 6 of the patent in suit it is for the skilled person unclear how, for what reason and to which extent the connecting member 113 acts / should act on said seat. If a structural part, in the present case the connecting member, acts on a second structural part, in the present case the seat, then such action should result in a change in the condition of the second structural part. This means in the present case that the seat would experience a movement and/or a deformation and/or a different load. In the absence of any kind of information in this respect in the patent in suit, the Board considers that it is for the person skilled in the art unclear, how, for which reason and to what extent the condition of the seat changes when the connecting member 113 rotates together with the handle 112 and the pin 116, i.e. what is the meaning of and how is realised the acting of the connecting member on the seat.

- 1.5 The appellant argued further that the side opening of the seat through which the pin 116 passes in order to be connected to the displacement member is used as rotational support for the pin and for stopping the pin from moving along its axis, preventing thereby a possible disconnection between the pin and the displacement member. Thus, when the connecting member is rotationally moved due to the rotation of the handle, then as a result of the connection between the pin and the side opening of the seat the connecting member acts on the seat.
- 1.6 The Board remarks in this connection that it is nowhere mentioned in the patent in suit that the pin 116 is supported by the side opening of the seat during its rotational movement and/or that the pin's movement along its axis is restricted by said side opening of the seat. Furthermore, the statement in claim 1 that the pin is connected to the seat encompasses both a direct and an indirect connection between said two parts, so that such expression cannot be understood as undisputedly implying that the pin acts on the seat. For these reasons the Board cannot follow the above-mentioned appellant's argument.
- 1.7 From the above follows that the skilled person cannot find in the patent in suit any information concerning the kind of action that will be imposed by the connecting member on the seat, so as to fulfil the requirement "acts on the latter" (=seat) and thus the above-mentioned added feature renders claim 1 unclear. Accordingly, claim 1 of both the main and the auxiliary request does not meet the requirements of Article 84 EPC. As a consequence therefrom both requests are not allowable.

2. Given that the Board finds that both the main and the auxiliary request are not allowable for lack of clarity of their respective claim 1, there is no need to address the admissibility of said requests filed after issue of the summons to oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated