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**Datasheet for the decision
of 19 November 2012**

Case Number: T 0811/12 - 3.2.07

Application Number: 05795288.9

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A47J 31/41, B67D 1/12,
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Language of the proceedings: EN

Title of invention:

System and method for preparing a beverage suitable for
consumption

Applicant:

Koninklijke Douwe Egberts B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

"Added subject-matter (yes): no disclosure concerning second
meaning of added feature"

Decisions cited:

-

Catchword:

-



Case Number: T 0811/12 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 19 November 2012

Appellant: Koninklijke Douwe Egberts B.V.
(Applicant) Vleutensevaart 35
NL-3532 AD Utrecht (NL)

Representative: Jansen, Cornelis Marinus
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 November 2011
refusing European patent application
No. 05795288.9 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
E. Kossonakou

Summary of Facts and Submissions

I. The applicant (appellant) filed an appeal against the decision of the Examining Division refusing European patent application No. 05 795 288.9. It requested that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of claim 1 of the new main request filed in the course of the oral proceedings. All previous requests were withdrawn.

II. Claim 1 of the new main request reads as follows

A system (1) for preparing a predetermined amount of beverage suitable for consumption, provided with:

an exchangeable holder (2) and

an apparatus (4) provided with a fluid dispensing device (6), which is detachably connected to the exchangeable holder (2) for dispensing at least one amount of at least a first fluid, such as a liquid and/or a gas, in particular such as water and/or vapour, under pressure to the exchangeable holder (2), while

the exchangeable holder (2) is provided with at least one storage space (8) which is filled with a second fluid, such as a concentrate, wherein the exchangeable holder (2) is further provided with at least a first mixing chamber (10), at least one outflow opening (12) which is in fluid communication with the first mixing chamber (10) for dispensing the beverage from the first mixing chamber (10), at least one fluid communication (14) between the storage space (8) and the first mixing

chamber (10) for dispensing the second fluid to the first mixing chamber (10) and at least one inlet opening (16) which is detachably connected to an outlet opening (18) of the fluid dispensing device (6) for supplying the first fluid to the first mixing chamber (10),

the apparatus (4) being further provided with a dosing device (24) which is designed to supply the second fluid in a dosed manner from the storage space (8) to the first mixing chamber (10), by pressing empty the storage space (8) with the aid of a force generated by air pressure, whereby for the purpose of preparing a predetermined amount of beverage suitable for consumption, the exchangeable holder is placed in the apparatus and the storage space forms part, at least partly, of the dosing device, while

the fluid dispensing device (6) is designed to supply the first fluid under pressure to the first mixing chamber (10), so that in the first mixing chamber (10) the first fluid and the second fluid mix together for obtaining the beverage which then leaves the exchangeable holder (2) via the outflow opening (12), and

the system is further provided with a control device (34) for controlling the dosing device (24) and the fluid dispensing device (6)

wherein the exchangeable holder (2) is further provided with a restriction (20) which is included in a fluid flow path (22) which reaches, via the outlet opening

(18) and the inlet opening (16) from the fluid dispensing device (6) to the first mixing chamber (10)

wherein the restriction (20) is designed such that in use, with the restriction (20), a jet and/or mist of the first fluid is generated which flows into the first mixing chamber (10) and

wherein the dosing device (24) is a controllable active dosing device (24) for supplying the second fluid to the first mixing chamber (10) by means of applying an increased pressure to the second fluid,

characterized in that the exchangeable holder (2) is provided with an air inlet opening (42) downstream of the restriction (20), for supplying air to the first mixing chamber (10) and for whipping air into the beverage for obtaining a beverage with a fine-bubble froth layer, in that the air inlet opening (42) has a predetermined size depending on the type of beverage that is to be prepared such that when a different holder is placed in the apparatus with which another type of beverage is to be prepared the size of the air inlet is adjusted accordingly, and that the storage space is pressed empty.

III. The following document considered in the impugned decision is referred to:

D2 US-A-5 842 603.

IV. According to the impugned decision claim 1 according to the then main request is not novel. Claim 1 according to the then auxiliary request has been considered as

not satisfying the requirement of Article 123(2) EPC due to added features relating to the provision of an air inlet opening.

- V. In the annex to the summons to oral proceedings the Board i.a. referred to the holder being undefined with respect to the element(s) of the system to which it is exchangeably mounted. Further, the dosing of the second fluid appeared to be unclear.

In a further communication dated 16 November 2012 the Board referred to the disclosure given with respect to the dosing device.

- VI. The submissions of the appellant are essentially as follows:

Claim 1 satisfies the requirement of Article 123(2) EPC taking into account the general disclosure of the application as filed with respect to dispensing of the second fluid from the storage space. Page 32 of the original description lines 17 to 19 allows for a more general claiming of the dosing device. The same result is obtained if D2 is taken into account which discloses that air pressure is directly applied to a storage space to dispense a concentrate stored therein.

- VII. Oral proceedings took place on 19 November 2012.

Reasons for the Decision

1. *Claim 1 - Article 123 (2) EPC*

1.1 Concerning the features relating to a dosing device, current claim 1 differs from claim 1 as originally filed

(a) in that it is defined that the apparatus (instead of the system) is provided with the dosing device

and in that, in addition to the feature "the system being further provided with a dosing device which is designed to supply the second fluid in a dosed manner from the storage space to the first mixing chamber" of claim 1 as originally filed, the following features are introduced:

(b) by pressing empty the storage space with the aid of a force generated by air pressure, whereby

(c) for the purpose of preparing a predetermined amount of beverage suitable for consumption,

(d) the exchangeable holder is placed in the apparatus and

(e) the storage space forms part, at least partly, of the dosing device.

1.2 **Feature (b)** has been taken from the description (page 32, lines 17 - 19). The passage concerned reads as follows: "Pressing the storage spaces empty can also be carried out in a different manner such as, for

instance, pressing empty with the aid of a force generated by air pressure. This force, in turn, can act on the outsides of the storage space."

This passage is part of a section of the description starting with the sentence "The invention is not limited in any manner to the embodiments outlined hereinabove" (page 31, lines 24, 25).

- 1.3 It is undisputed that **feature (b)** and with it the corresponding portion of the description (page 32, lines 17 - 20) **can have two different meanings**.
- 1.3.1 According to the **first meaning of feature (b)** which is in line with the remainder of the disclosure of the application as filed the force generated by air pressure serves to actuate a compressing unit which acts on a movable wall bounding the storage space to dispense the second fluid. By movement of the movable wall the volume of the storage space can be varied, i.e. decreased. According to the embodiments of figures 1 - 6, 8 and 10 the storage space is - corresponding to feature (d) - placed into the space between two pressing members of the apparatus (cf. e.g. page 11, line 2 - page 12, line 9). According to figure 7 the storage space is formed by a rigid cylindrical outer wall and an inner rigid wall, which can be moved to reduce the volume of the storage space (page 26, line 5 - page 27, line 6). For the embodiment of figure 9 (page 27, line 27 - page 28, line 4) the movable wall may be manufactured from a deformable flexible material such as a soft plastic. According to this embodiment it has a concertina-shaped structure.

In the embodiments referred to above the force generated by air pressure acts on the outside of the storage space.

Furthermore, all these embodiments have in common that the dosing device is formed on the side of the exchangeable holder by the storage space (cf. feature (e)) and on the side of the apparatus (cf. feature (a)) by the members which can act on the movable wall of the storage space to decrease its volume.

Placing the storage space into the apparatus moreover corresponds with connecting the exchangeable holder with the apparatus (cf. feature (d)).

- 1.3.2 According to the **second meaning of feature (b)** and the corresponding portion of the description the storage space would, as emphasized by the appellant, be pressed empty with the aid of a force generated by air pressure which does not act on a movable wall of the storage space but directly on the second fluid.

As stated by the Board in the course of the oral proceedings no direct and unambiguous disclosure is given with respect to such an understanding of feature (b).

This applies, as indicated by the Board during the oral proceedings, not only with respect to the manner in which air pressure is directly applied onto the second fluid but also to the structure of the dosing device and the storage space under such circumstances.

Furthermore, as discussed during the oral proceedings, this applies likewise to the manner in which the storage space and thus the holder is connected to the apparatus, given such a direct application of air pressure on the second fluid.

As acknowledged by the appellant, this portion of the description relates only to the dosing function of the dosage device. It is, however, completely silent on how such a dosage device should function with respect to the connection between the storage space of the exchangeable holder and the apparatus.

- 1.4 Feature (b) thus has no basis in the application as filed for the second meaning.

Consequently introduction of this feature into claim 1 leads to the result that claim 1 does not satisfy the requirement of Article 123(2) EPC.

2. The above result holds true considering the further arguments of the appellant.

- 2.1 According to one argument the portion of the description of page 30, lines 14, 15 stating "It is also conceivable that the dosing device relates to an active dosing device which dispenses the second fluid by means of a pump" can be considered as the basis for feature (b).

- 2.1.1 As indicated by the Board during the oral proceedings from this general reference to a pump it cannot directly and unambiguously be derived that the storage space is pressed empty by air pressure which acts

directly on the second fluid. The latter is too specific for that.

2.2 The appellant based a further argument on the disclosure of document D2, according to which the inside of a container is pressurized to force a concentrate out of the container (column 7, lines 4 - 12; column 8, lines 16 - 22; figures 19, 20A).

2.2.1 The appellant neither disputed that the disclosure of D2 relied upon does not form part of the disclosure of the application concerned nor that it belongs to the general technical knowledge to be considered in the assessment of the disclosure of the application as filed.

Thus D2 cannot be considered as providing a basis for this amendment of claim 1.

3. Since already this amendment of claim 1 infringes Article 123(2) EPC it can remain open whether or not the other amendments of claim 1 satisfy the requirement of Article 123(2) EPC and whether claim 1 satisfies the requirements of Article 84 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders