

**Internal distribution code:**

- (A) [ - ] Publication in OJ  
(B) [ - ] To Chairmen and Members  
(C) [ - ] To Chairmen  
(D) [ X ] No distribution

**Datasheet for the decision  
of 13 November 2014**

**Case Number:** T 2264/12 - 3.2.04

**Application Number:** 08834005.4

**Publication Number:** 2194827

**IPC:** A47J37/12

**Language of the proceedings:** EN

**Title of invention:**

LOW OIL VOLUME FRYER WITH AUTOMATIC FILTRATION AND TOP-OFF  
CAPABILITY

**Applicant:**

Restaurant Technology, Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 84, 123(2)

EPC R. 137(5)

**Keyword:**

Clarity of claim 1 - main request (yes)

Added subject-matter claim 1 - main request (no)

Remittal to the department of first instance

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 2264/12 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 13 November 2014**

**Appellant:** Restaurant Technology, Inc.  
(Applicant) 2915 Jorie Boulevard  
Oak Brook, IL 60523 (US)

**Representative:** Von Kreisler Selting Werner - Partnerschaft  
von Patentanwälten und Rechtsanwälten mbB  
Deichmannhaus am Dom  
Bahnhofsvorplatz 1  
50667 Köln (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 16 August 2012  
refusing European patent application No.  
08834005.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Frank  
**Members:** J. Wright  
T. Bokor

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division dated 16 August 2012 to refuse European application No. 08 834 005.4 pursuant to Article 97(2) EPC. The examining division held that the subject-matter of amended claim 1 as filed on 28 June 2012 did not meet the requirements of Articles 123(2) and 84 EPC.
- II. The appellant (applicant) filed a notice of appeal together with its statement of grounds of appeal on 9 October 2012. The appeal fee was paid on the same day.
- III. A communication dated 15 October 2014 pursuant to Article 15(1) RPBA was issued after a summons to attend oral proceedings. The appellant was inter alia notified that, should a new allowable claim 1 be filed, the Board intended to cancel the oral proceedings and to continue the proceedings in writing. In response the appellant on 05 November 2014 filed amended claims as a new main request and auxiliary requests I to III. With fax of 12 November 2014 the appellant withdrew its request for reimbursement of the appeal fee. Subsequently, the oral proceedings were cancelled by the Board.
- IV. The appellant requests that the decision under appeal be set aside and the application according to the new main request be acknowledged to meet the requirements of Articles 84 and 123 EPC, alternatively according to any of the first to third auxiliary requests, and the case be remitted to the department of first instance for further examination.

V. The wording of claim 1 of the new main request reads as follows:

"1. A multi-function system for automatically filtering and maintaining cooking oil in fryer pots of a deep fryer comprising:

a deep fryer (10);

a pump;

a controller (39); and

a plurality of fryer pots (20, 25, 30) disposed within said deep fryer (10), each of said plurality of fryer pots (20, 25, 30) containing at least a submersible temperature sensor (105) and a temperature sensor (111), wherein said submersible temperature sensor (105) commences an automatic filling cycle when said temperature sensor (111) senses a predetermined oil temperature of approximately 149°C (300°F),

wherein said deep fryer (10) is capable of operating in an automatic filling mode to maintain an oil level when said submersible temperature sensor (105) enables said pump and a valve; and an automatic filtration mode to allow filtration of oil in one of said plurality of fryer pots (20, 25, 30) after said temperature sensor (111) senses a predetermined oil temperature of approximately 149°C (300°F) to 160°C (320°F)."

VI. The appellant submitted essentially the following arguments:

Claim 1 of the new main request was based on claim 1 as filed with letter of 27 June 2012. It had been

clarified that the submersible sensor 105 commenced an automated filling cycle. The predetermined temperatures sensed by sensor 111 in the context of automatic filling and filtration had also been added. Support for these amendments could particularly be found on page 7, 3<sup>rd</sup> par. of the application (as published). It was also referred to figure 2 of the application, where the sensors 111 and 105 are shown as first and second temperature sensors. Therefore, claim 1 of the main request complied with Articles 123(2) and 84 EPC.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Amendments - new main request*
  - 2.1 Claim 1 of the new main request is firstly based on claim 1 as filed. The temperature sensor 111 and submersible temperature sensor 105 of claim 1, respectively, correspond to the first and second temperature sensors of original claim 1. Moreover, the control of the filling and filtration modes of claim 1 has been further specified. New claim 1's automatic operation by means of a pump and a valve together with a controller is based on page 7, 3<sup>rd</sup> paragraph, lines 1 to 5 (as published); page 9, last two paragraphs (as published); and figure 2. The predetermined oil temperature sensed by the temperature sensor 111 to commence the automatic filling cycle, however, has been limited to approximately 300<sup>0</sup> F. This is considered originally disclosed on page 7, 3<sup>rd</sup> par. (as published), where it is stated that the required temperature must be "at least" approximately 300<sup>0</sup>F. The predetermined oil temperature of approximately 300<sup>0</sup>F to 320<sup>0</sup>F to allow the

automatic filtration is based on claim 4 as filed, and page 9, last two sentences (as published).

2.2 Following from the above, the Board holds that the subject-matter of claim 1 of the new main request is both originally disclosed and supported by the description, cf. page 7 and 9 (as published), and, therefore, complies with the requirements of Articles 123(2) and 84 EPC.

3. *Remittal to the examining division*

The application was refused solely on the issue of extended subject-matter and lack of clarity of claim 1, Articles 123(2) and 84 EPC. Since the outstanding requirements of novelty and inventive step were not yet considered by the examining division, the Board therefore intends to exercise its discretion under Article 111(1) EPC and remit the case to the first instance, in accordance with the further request of the appellant. Since claim 1 according to the new main request complies with Article 84 and 123(2) EPC so that the grounds for refusal in the decision under appeal are now moot and apart from the open questions of novelty and inventive step, no other possible objections under the EPC are immediately apparent to the Board, there is no need for the Board to consider the auxiliary requests.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution on the basis of claim 1 of the new main request dated 5 November 2014.

The Registrar:

The Chairman:



G. Magouliotis

E. Frank

Decision electronically authenticated