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**Datasheet for the decision  
of 15 February 2017**

**Case Number:** T 1200/15 - 3.2.04

**Application Number:** 07718603.9

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**Language of the proceedings:** EN

**Title of invention:**  
DRIP FILTER COFFEE MAKER

**Applicant:**  
Breville PTY Limited

**Headword:**

**Relevant legal provisions:**  
RPBA Art. 13(3)  
EPC R. 137(3)  
EPC Art. 123(2), 111(1)

**Keyword:**

Admissibility - late filed main request (no), auxiliary  
request (yes)  
Added subject-matter - claims 1 to 4 of auxiliary 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 1200/15 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 15 February 2017**

**Appellant:** Breville PTY Limited  
(Applicant) Building 2,  
Port Air Industrial Estate,  
1A Hale Street  
Botany, NSW 2019 (AU)

**Representative:** Williams, Ceili  
Stevens Hewlett & Perkins  
1 St Augustine's Place  
Bristol BS1 4UD (GB)

**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 20 November 2014 refusing European patent application No. 07718603.9 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Frank  
**Members:** G. Martin Gonzalez  
C. Schmidt

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division posted on 22 November 2014, to refuse the European patent application No. 07718603.9. The appellant (applicant) filed a notice of appeal on 16 January 2015, paying the appeal fee on the same day. The statement of grounds of appeal was submitted on 30 March 2015.
  
- II. In a communication dated 30 August 2013, the examining division found that amended claim 1 did not comply with Article 123(2) EPC. With the appellant's reply of 10 March 2014, a new set of claims has been filed, a basis of amendments of claim 1 has been set out, and also a basis of amendments of dependent claims 2 to 15 has been briefly tabled on page 3 of the reply. However, the examining division subsequently held that the subject-matter of independent claim 1 as filed on 10 March 2014 contravened the requirements of Article 123(2) EPC, and refused the patent application.
  
- III. With its grounds of appeal, the appellant filed a third time a new set of claims to overcome the Article 123(2) EPC objection of refused claim 1. A communication pursuant to Article 15(1) RPBA was issued by the Board, after a summons to attend oral proceedings. The Board indicated in its communication that claim 1 still did not comply with Article 123(2) EPC, and further noted that also the basis for dependent claims 2 to 15 was questionable. As an example, the Board referred to dependent claim 6 and its alleged basis of disclosure as set out in the table on page 3 of the submission of 10 March 2014. In response, the appellant filed on 6 February 2017 a fourth and fifth set of claims as main

and auxiliary requests, respectively, shortly before the oral proceedings.

- IV. The oral proceedings were duly held on 15 February 2017. The Board noted that the dependent claims of the belated main and auxiliary requests as filed just before the oral proceedings could not be admitted, because of lack of clear allowability under Article 123(2) EPC. The appellant subsequently filed another (sixth) set of claims of a new main request, thereby replacing the requests previously on file. Thereafter the Board indicated that apparently only claims 1 to 4 of the new main request were clearly allowable. Finally, the appellant filed a new auxiliary request consisting of claims 1 to 4 of the new main request.
- V. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the main request (claims 1 to 12), filed at the oral proceedings before the Board, or, alternatively, on the basis of the auxiliary request consisting of claims 1 to 4 of the main request as filed during the oral proceedings before the Board.
- VI. The first five claims of the main request read as follows:
- "1. A drip filter coffee maker (10) comprising:  
a base (11);  
an upright housing (14) that interconnects the base (11) with a head assembly (12);  
the head assembly (12) further comprising a filter cone (24);  
a reservoir (15) including a water tank (81) having a level detection sensor (82 - 84);  
a boiler;

a controller coupled to the level detection sensor (82 – 84) and configured to determine volume of water in the water tank (81);  
a flexible hose (86) with a water outlet (87) is connected to the reservoir (15), the water outlet (87) being located above the filter cone (24)  
for discharging water into the filter cone (24);  
a plate burr grinder (21) that is adapted to discharge ground coffee into a coffee chute (25); the coffee chute (25) extending from an exit of the plate burr grinder (21) to a chute door (26) located above the filter cone for discharging ground coffee into the filter cone (24);  
characterised in that the controller has:  
a means for receiving data indicative of water volume in the water tank (81), which, at or just before inception of a brew cycle, is indicative of brew volume;  
a means for adjusting the quantity of coffee beans that are ground and discharged by the plate burr grinder (21);  
a means for calculating an "on" time for the plate burr grinder (21) that is based on the water volume in the water tank (81);  
a means for on and off cycling of the boiler thereby slowing down the effective rate at which water is delivered from the tank (81) to the filter cone (24), thereby adjusting a brew time which is based on the indication of brew volume."

"2. The drip filter coffee maker according to claim 1, wherein the coffee chute (25) is a slightly curved enclosed channel that approximates an exit trajectory of the ground coffee."

"3. The drip filter coffee maker according to claim 1 or claim 2 wherein the chute door (26) is opened by activation of an actuator when grounds are being ejected by the grinder (21) the chute door (26) being closed when a grinding operation is complete."

"4. The drip filter coffee maker according to any one of the preceding claims, wherein the grinder includes a motor and a fan (74) is arranged to rotate with the grinder motor and assists with the discharge of the ground coffee."

"5. The drip filter coffee maker according to claim 3, wherein the chute door (191) is mechanically coupled to a direct current stepping motor (199); the chute door (191) comprises an arched floor (192) extending between two side-panels;

a slot (195) is rigidly attached to the chute door (26, 191); the motor (199) has an output drive shaft (198) on which is mounted a crank (197) with a pin that rides in the slot (19) such that rotation of the motor (199) is translated into a reciprocating motion in the chute door (26, 191); and the chute door (26, 191) is opened when the coffee grounds are being discharged and closed when a grinding operation is complete."

VII. The auxiliary request solely consists of claims 1 to 4 of the main request.

VIII. The appellant argued as follows:

The amendments of claims 1 to 4 of the main and auxiliary requests are not objected to by the Board. However, also dependent claim 5 of the main request is clearly based on the original application, cf. figure 19 to 21 embodiment on page 10, 1. 28 to page 11, 1.5

(as published). Thus, it is immediately apparent that claim 5 does not contain any added subject-matter. The same holds true for dependent claims 6 to 12 of the main request. Therefore, the main and auxiliary requests should be admitted into the proceedings. Since the claims of the main and auxiliary requests apparently comply with Article 123(2) EPC, it is understood that the case will be remitted to the first instance for further examination.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Admission of main- and auxiliary requests
  - 2.1 The new main request was filed at the latest possible point in time, that is, not until the oral proceedings before the Board. The admissibility of the new main request at that very late stage of the proceedings is thus subject to the discretion of the Board under Article 13(3) RPBA. In addition, the provisions of Rule 137(3) EPC in connection with Rule 100(1) EPC have to be applied. Hence, when exercising its discretion in admitting new amendments filed shortly before or in the course of oral proceedings, the question of whether or not they are clearly allowable has to be answered by the Board. This criterion means that it must be immediately apparent to the Board, with little or no investigative effort on its part, that the new amendments successfully address the issues raised without giving rise to new ones.
  - 2.2 In response to the written communication of the Board, the appellant belatedly filed a new claim 1 of the



auxiliary request submitted on 6 February 2017. This claim is identical to claim 1 of the new main request presently on file.

With respect to claim 1 as filed with the grounds of appeal, the feature "fluid communication" has now been specified in that "a flexible hose ... is connected to the reservoir", which is clearly based on the sole embodiment described on page 5, line 32 to page 6, line 2 and shown in figure 8 of the application (as published). Moreover, it has now been specified that according to an embodiment, the "brew time" apparently is adjusted by a means for "on and off cycling of the boiler", when slowing down the effective rate at which the boiler delivers water to the filter cone, cf. page 9, lines 26 to 31, and page 10, lines 8 to 11 (as published).

Thus, on the face of it, claim 1 of the main request indeed overcomes the Article 123(2) EPC objections raised in the Board's communication prior to the oral proceedings.

- 2.3 Having regard to the dependent claims, claim 2 stems from original claim 3, and is also based on page 4, line 32 to page 5, line 2 (as published). Moreover, claim 3 is based on claims 4 and 5, and page 4, lines 13-17 (as published). Furthermore, claim 4 is clearly derivable from page 5, lines 6-8 of the application (as published).
- 2.4 Turning to dependent claim 5, the appellant argues that its subject-matter was directly and unambiguously derivable from the embodiment as shown in figures 19 to 21 of the application.

However, according to the description as filed, the "arched floor 192" of claim 5 does not extend between any side-panels. Rather, the arched floor 192 extends between two generally "fan-shaped" side panels 193, 194, cf. page 10, lines 28-32 (as published). The Board also refers to the figures of the application. The skilled person would readily glean from in particular figure 19, that the side panels are formed by circular sectors, i.e. that the panels must be (generally) "fan-shaped".

Consequently, since at least no basis can be immediately found for a shape of the side panels other than generally "fan-shaped" in context with the figure 19 to 21 embodiment, the subject-matter of claim 5 apparently has been generalized with respect to the original disclosure of the application.

2.5 Therefore, the amendment of claim 5 of the main request is not considered to be clearly allowable by the Board.

The Board thus decides not to admit the main request into the proceedings, Article 13(3) RPBA. The Board finally notes that the alleged basis of disclosure for the dependent claim amendments set out on page 3 of the appellant's submission of 10 March 2014 was already found erroneous by the Board well before the oral proceedings. Hence, also in the interests of procedural economy, considering further claim amendments at that stage of the proceedings would not have been justified under Article 13(3) RPBA.

2.6 Following from the above the Board however holds that the amendments of claims 1 to 4 of the main request are clearly allowable and, therefore, the Board exercises

its discretion to admit the auxiliary request into the proceedings.

3. Amendments auxiliary request

3.1 Claim 1 of the auxiliary request is firstly based on claim 1 as filed. However, most of the newly added features stem from the original description, as is set out in the claim analysis of new claim 1 below (referring to the application as published):

3.1.1 "A head assembly (12)" further comprising a filter cone (24), and "a reservoir (15)" including a water tank (81) having a level detection sensor (82-84), is derivable from page 3, lines 27-29, and page 5, lines 16 and 17, and figures 1, 2 and 8.

3.1.2 As to the formulation "a controller coupled to" in claim 1, an embodiment of how the device's controller can receive information from the tank volume sensors is described in conjunction with proximity sensors 84, cf. page 5, lines 22-24, and page 9, lines 22 and 23.

However, in the context of lines 16 and 17 on page 5, where a float 82 or, in the alternative, "other level detection sensors" are disclosed, the controller's detection means may indeed be based on a sensor arrangement other than the exemplarily described sensors consisting of a float 82, a magnet 83, and vertically arranged proximity sensors 84. This is also in accordance with line 18 on page 5, where the float 82 only "for example" incorporates a magnet 83.

Thus, "a controller coupled to" a (commonly used) level detection sensor (82-84) and (suitably) configured to determine volume of water in the tank (81) is

considered to be derivable for the skilled person from a contextual reading of page 5, lines 16-25.

- 3.1.3 In present claim 1 as admitted, see point 2.2 above, the feature "a flexible hose ... is connected to the reservoir" now has also been added, which is clearly based on the embodiment described on page 5, line 32 to page 6, line 2 and shown in figure 8.
- 3.1.4 "A plate burr grinder (21)" in claim 1 that is adapted to discharge ground coffee into a coffee chute (25), is derivable from page 4, line 9. Moreover, it has now been specified that the coffee chute extends from an exit of the plate burr grinder to a chute door located above the filter cone, cf. claim 2 as filed. Cf. also page 4, lines 9-14 of the description.
- 3.1.5 "A means for receiving data indicative of water volume in the water tank" according to claim 1 is described on page 9, lines 24-26. Moreover, "a means for adjusting the quantity of coffee beans" and "a means for calculating an "on" time for the plate burr grinder as defined in claim 1 can be derived from page 5, lines 27-30.
- 3.1.6 Finally, claim 1 addresses "a means for adjusting the effective rate at which water is delivered from the tank to the filter cone, thereby adjusting a brew time, which is based on the indication of brew volume", cf. page 9, lines 28-31.

In present claim 1 as admitted, see point 2.2 above, it has now also been specified that the "brew time" is clearly adjusted by a means for "on and off cycling of the boiler", when "slowing down the effective rate at

which the boiler delivers water to the filter cone",  
cf. page 9, lines 26 to 31, and page 10, lines 8 to 11.

3.2 As for the original disclosure of dependent claims 2 to 4 of the auxiliary request, reference is made to point 2.3 of this decision above.

3.3 To conclude, the Board is satisfied that the subject-matter of claims 1 to 4 of the auxiliary request complies with the requirements of Article 123(2) EPC.

4. Remittal

The application was refused solely on the basis of extended subject-matter of claim 1 as filed on 10 March 2014. Since the requirements of novelty and inventive step were not yet considered by the examining division, the Board exercises its discretion under Article 111(1) EPC by remitting the case to the first instance for further prosecution, as was also agreed with by the appellant.

## 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 the auxiliary request (solely claims 1 to 4 of the main request) as filed at the oral proceedings before the Board.

The Registrar:

The Chairman:



G. Magouliotis

E. Frank

Decision electronically authenticated