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 June 2019

Case Number: T 0153/16 - 3.2.04

Application Number: 08736458.4

Publication Number: 2155023

IPC: A47J31/40, A47J31/46

Language of the proceedings: EN

Title of invention:
BEVERAGE PRODUCTION MODULE

Patent Proprietor:
Société des Produits Nestlé S.A.

Opponent:
González Posada, Luis

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)

This datasheet is not part of the Decision.
It can be changed at any time and without notice.

Decisions cited:

Catchword:

This datasheet is not part of the Decision.
It can be changed at any time and without notice.

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0153/16 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 13 June 2019

Appellant: (Opponent)	González Posada, Luis Avd/ Espandaña 72 47140 Valladolid (ES)
Representative:	V.O. P.O. Box 87930 2508 DH Den Haag (NL)
Respondent: (Patent Proprietor)	Société des Produits Nestlé S.A. Entre-deux-Villes 1800 Vevey (CH)
Representative:	Rupp, Christian Mitscherlich PartmbB Patent- und Rechtsanwälte Postfach 33 06 09 80066 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 10 November 2015 concerning maintenance of the European Patent No. 2155023 in amended form.**

Composition of the Board:

Chairman	A. de Vries
Members:	G. Martin Gonzalez
	C. Heath

Summary of Facts and Submissions

I. The appellant-opponent lodged an appeal, received on 20 January 2016, against the interlocutory decision of the Opposition Division posted on 10 November 2015 concerning maintenance of the European Patent No. 2155023 in amended form, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 18 March 2016.

II. Opposition was filed under Article 100(a) EPC based on lack of novelty and lack of inventive step.

The Opposition Division held that the patent as amended met the requirements of the Convention, inter alia having regard to the following evidence:

(D1) WO 2007/003062 A1

III. The appellant-opponent requests that the decision under appeal be set aside and that the patent be revoked.

The respondent-proprietor requests that the appeal be dismissed, in the alternative that the patent be upheld based on Auxiliary Request I filed with letter dated 27 July 2016, or one of Auxiliary Requests II-V all filed with letter dated 5 February 2019.

IV. Oral proceedings were held on 13 June 2019.

V. The wording of claim 1 of the requests is as follows:

(a) Main request - as upheld by the Opposition Division

"Beverage production module (l) comprising

a pump (24) for delivering a beverage via a beverage delivery outlet (8) from the beverage production module (1),
a graphical interface (2) for accepting a touch input, said graphical interface (2) comprising a pointing means (4) for providing filling level instructions by a touch input on the graphical interface (2) and
control means (7) in data communication with the pump (24) and the graphical interface (2) for receiving filling level instructions and controlling the pump (24) accordingly, wherein the graphical interface (2) comprises a virtual representation of at least one type of receptacle (19,19a, 19b) and
the pointing means (4) comprises a virtual filling level icon that can be displaced by a touch input in relation to the virtual representation of the at least one receptacle (19,19a, 19b)
wherein the pointing means (4) is adapted to provide new filling level instructions by a further touch input on the graphical interface (2) during the delivery of beverage."

(b) Auxiliary request I

Claim 1 is amended vis-a-vis the main request by adding the feature

"...and wherein the control means (7) is adapted to check, according to predetermined parameters, whether the new filling instructions can be accepted."

(c) Auxiliary request II

Claim 1 as in the main request, amended to add the features:

"...wherein the virtual filling level icon can be displaced in any position of level in relation to the representation of the receptacle (19, 19a, 19b)
or
wherein the pointing means (4) comprises several virtual filling level icons at predetermined virtual positions on the graphical representation of the receptacle (19, 19a, 19b)."

(d) Auxiliary request III

Claim 1 is amended vis-a-vis the main request by adding the feature:

"..., wherein the module (1) further comprises a sensing means (9) in data communication with the control means (7) and designed to sense the actual volume of the beverage delivered from the pump (24)."

(e) Auxiliary request IV

Claim 1 as in auxiliary request III amended to add the following feature:

"..., and wherein the graphical interface (2) comprises an output identifier (6) for indicating the actual volume of beverage delivered from the pump (24) in real time as measured by the sensing means (9)."

(f) Auxiliary request V

Claim 1 is amended vis-a-vis claim 1 of auxiliary request IV by including the feature:

"..., and wherein the output identifier (6) comprises a graphical representation of the progress of the filling of the virtual receptacle (19, 19a, 19b)."

VI. The appellant-opponent argued as follows:

The subject-matter of claim 1 according to all requests lacks an inventive step starting from D1 in combination with the common general knowledge of the person skilled in the art, under consideration that some differentiating features are to be disregarded for the assessment of inventive step since they relate to mere presentation of information and do not provide a technical contribution.

VII. The respondent-proprietor argued as follows:

The subject-matter of claim 1 of all requests involves an inventive step in the sense of Article 56 EPC in the light of the cited state of the art.

Reasons for the Decision

1. The appeal is admissible.

2. The invention is concerned with a beverage production module, such as a soup or coffee machine, see specification paragraphs [0001]-[0003]. The invention is aimed at providing a control panel with a graphical user interface accepting touch input that is more intuitive to use, see paragraphs [0006]-[0007]. Thus the claimed graphical interface comprises a virtual representation of a receptacle to be filled and a pointing means. The pointing means in turn comprises a virtual representation of the receptacle's filling level, which can be displaced by a touch input. The

selected position provides the filling level instruction for the machine. The pointing means is also available during the delivery of the beverage for providing new filling level instructions, thereby also allowing modification of instructions during beverage preparation, see B1 specification publication paragraph [0014].

3. Main request - Inventive step

The appellant-opponent challenges the Division's finding that claim 1 of the main request involves an inventive step, see section 12.2 of the impugned decision.

3.1 D1 is regarded by the parties as a suitable starting point for the assessment of inventive step.

It is undisputed that this disclosure describes as per figure 6A-6C a graphical interface for providing filling level instruction accepting a touch input, comprising a virtual representation of a receptacle 15 and pointing means, including [+]/[-] input buttons 5c and a numerical text representation or text icon 5e of the desired filling level (see figure 6B), and description, page 16, first full paragraph.

3.1.1 It is inter alia in dispute whether this numerical text representation 5e can be considered part of the pointing means in the sense of the contested claim, since in D1 touch input is provided *only* at the [+]/[-] icons 5c. As regards the term "pointing means" itself, the parties agree that this refers to touch input areas on the touch screen, i.e. area of the touch screen that are configured (by suitable interface programming) for inputting instructions.

In this regard, the Opposition Division held that the wording of the claim can also include pointing means having separate icons for touch input and for representation of the filling level, see written decision sections 9.1 and 9.4. It thus considered the numerical indication 5e of D1 as also forming part of the pointing means in the sense of the claim.

Indeed, the pointing means according to the contested claim are defined as "...comprising a virtual filling level icon that can be displaced by touch input...". In this respect, the Board first notes that the word *comprising*, in a claim, is to be normally interpreted by the broader meaning *including* or *comprehending*, see Case Law of the Boards of Appeal, 8th Edition 2016 (CLBA), II.A.6.2, meaning in the present case that the pointing means of claim 1 may include more icons beyond the virtual filling level one. Additionally, the formulation of claim 1 does not require that the filling level icon can be displaced exclusively by touch input on the filling level icon itself, but only by touch input without further specification where the touch input is performed on the display. Thus, two sets of icons or input areas, one for providing a representation of filling level which is displaceable in response to touch input elsewhere on the display also falls under the pointing means as defined by the claim. This however applies also to the filling level numerical icon 5e and the [+]/[-] icons 5c of D1. They are thus considered by the Board as an embodiment of pointing means, with the only difference that the filling level is represented by a virtual (graphical) representation rather than a numerical one.

The respondent-proprietor refers to the specific embodiments of the description, where the virtual filling level icon itself must be dragged by the user for input, in support of their argument that only graphical icons that allow for touch input can be considered part of the pointing means in the sense of the claim. However, in the Board's view such a limitation that the touch input area must be "dragable" corresponding to the drag icon of the embodiments in the description is not reflected in the wording of the claim. They thus cannot be read into the claim to limit the scope of protection defined by it.

3.1.2 In contrast to the known numerical text representation, the contested claim requires "...a virtual filling level icon...", i.e. a graphical representation that represents the desired filling level by its relative position with respect to the receptacle, and which can be displaced, so that for example a higher position of an icon represents a fuller receptacle. In figures 6A to 6C of D1 showing amount selection, the filling level (upper liquid surface) does not appear to change following user input on [+]/[-] buttons, nor is this described. Instead, according to the description on page 16, first full paragraph, only the numerical value changes upon touch input via the [+]/[-] buttons.

3.1.3 Additionally, the display as shown in figures 6A-6C is maintained during the user adjustment or selection phase prior to actual dispensing. Selection ends when the user presses the "OK" icon 5d, see page 16, first full paragraph. During the subsequent dispensing phase, the display changes to show new icons and a new touch input area, namely as in figures 4A-4C and/or 5A-5D, see D1, page 17, first full paragraph. During this dispensing phase, these touch input areas in the form

of "STOPP KAFFEE" or "STOPP MILCH" buttons allow for further user input.

The final feature of claim 1 of the main request in the understanding of the Board however requires that *the*, i.e. the *same* pointing means or touch input area, which as noted need not be a single area on the display, is adapted to provide new filling level instructions during delivery. This is understood to mean that during delivery the same pointing means, that is the same touch screen input area(s) on the same display menu as used to select an initial level, can be used to subsequently change filling level, cf. paragraph 0080 and figure 7.

3.2 Thus the contested claim differs from D1 in that the filling level icon is a virtual filling level icon, i.e. a graphical representation that can be displaced in relation to the receptacle, and in that the same pointing means or touch input area is also available during the delivery of the beverage for providing new filling level instructions. D1 also does not expressly mention a pump, which represents a further difference.

3.3 Insofar as a pump is not already a basic feature of a coffee making machine as in D1 (and thus implicit), it is a ubiquitous feature in coffee machines to ensure controlled water delivery and/or sufficient pressure during preparation. The provision of a pump is, in the Board's opinion, therefore a trivially obvious measure. This feature is also unrelated to the other differentiating features of the screen input so that inventive step can be assessed independently for each group of features. Nothing different has been argued.

3.4 As regards providing a movable virtual filling level, i.e. a graphical representation of selected filling level, instead of changing numerical values, this difference according tom the appellant-opponent relates to a different way of presenting the same information, namely selected filling level. This difference thus pertains to a presentation of information.

3.4.1 To the extent that presentation of information relates only to the manner in which cognitive content is conveyed to the user, it does not normally contribute to a technical solution of a technical problem, cf. Case Law of the Boards of Appeal, 8th edition, 2016 (CLBA), I.D.9.1.6.a). Furthermore, according to established jurisprudence such "non technical" features, i.e. which do not contribute to the technical character of an invention, are ignored in assessing inventive step, see CLBA I.D.9.1. More particularly, features aimed exclusively at improvements regarding the way information is perceived or processed by the human mind are regarded as non-technical, see CLBA I.D. 9.1.6.a). For a feature to contribute to the technical character of an invention an objectively credible technical effect must be demonstrated, see also CLBA I.D.9.1.5.

3.4.2 In the present case, the Board is unconvinced of any objectively credible technical effect associated with a graphical as opposed to numerical representation of selected filling levels. Both representations serve to provide cognitive feedback to the user so they can then decide to accept, increase or decrease it through the separate touch input icons. Any difference relates *exclusively* to how the user perceives the filling level information displayed. Whether they perceive a graphical representation as more intuitive and thus

better than a numerical one in the Board's view is purely a matter of subjective preference: some users might agree, while others will not. Such an effect cannot therefore be objectively ascertained. Therefore, it does not represent an objectively credible technical effect. For the above reasons, the Board holds that this difference must be disregarded for the assessment of inventive step when starting from D1.

3.5 Finally, the claimed subject-matter as stated also differs from D1 in that the same pointing means are also available during the delivery of the beverage. A new filling level instruction by further touch input is thus available, allowing the user to make adjustments to an initial selection also during beverage preparation. In this respect, document D1 also discloses the feature that the user can intervene in the running process performed by the machine and/or correct it, see D1, page 17, last paragraph ("Er kann auch, wenn er dies möchte, in den durch den Automaten durchgeführten Vorgang eingreifen und/oder dies korrigieren"). It is clear from a contextual reading that such corrections do not relate to changing the settings that are mentioned in the following paragraph, but rather refer to the ongoing process ("durch den Automaten durchgeführten Vorgang"). This follows from the immediately preceding sentence which refers to film like animations of the processes that the machine is performing at the moment, i.e. in real time. Furthermore, if intervention ("eingreifen") can be understood as referring to the possibility of stopping delivery before the selected quantity has been meted out, as shown for example in figures 4A-C (menu item "Stopp Kaffee"), correction ("korrigieren") is rather read as meaning adjustment or change of an already selected value while delivery is being carried out. In

the Board's view, this can only pertain to the selected filling amount, just as in the patent.

3.5.1 Thus, D1 already suggests that the user can correct the parameters of the previous selection phase that were inputted with the pointing means of figures 6A-6C, the beverage filling level being one of them, i.e. that the device is also adapted to provide new, corrected, filling level instruction.

3.5.2 D1, however, does not describe how to carry out this suggestion. Vis-a-vis the use of separate display menus, making available the same pointing means for the same input option on the same display menu during beverage delivery, as in the contested claim 1 of the main request, provides one way of realizing the above described suggestion of page 17, last paragraph of D1. Thus, starting from D1, the associated technical problem can be formulated as how to realize the suggested feature of D1 that the user can also input a corrected filling level during the delivery of the beverage. This problem is technically unrelated to that associated with the subjectively more intuitive choice of a graphical representation for the pointing means per se. Therefore, it does not bestow technical character on that feature, whereby both features can be treated separately.

3.5.3 As submitted by the appellant-opponent, the most obvious possibility that would spring to mind to the skilled person, an engineer involved in the design and development of user interfaces for appliances, when tasked with providing a means for allowing subsequent adjustment of an input parameter, is to use the very same user controls. It is immediately apparent from common general knowledge that using the same input

control means, instead of two different ones, simplifies design and also use of the interface, as is exemplified by user interfaces of well-known household appliances such as toasters, ovens, microwaves. Indeed, when it is intended that the user corrects input parameters during the cooking process, such as time or temperature, the same user input controls as available during the previous selection phase are provided. Applying this common general knowledge to the machine of D1, the skilled person would configure the device to allow the user to adjust filling level using the same touch screen [+]/[-] input areas as used for making their initial filling level selection. As noted, these input areas are pointing means in the sense of claim 1.

Consequently, the provision of the same pointing means also adapted to provide new filling level instructions by a further touch input during the delivery of the beverage does not confer inventive step to the subject-matter of claim 1.

3.6 The Board thus concludes that claim 1 of the main request does not involve an inventive step in the sense of Article 56 EPC.

4. Auxiliary requests

4.1 Claim 1 of **auxiliary request I** is amended to add that the control means is adapted to check, according to predefined parameters, whether the new filling level instructions can be accepted. These are thereby subjected to a plausibility check.

4.1.1 The Board considers that a plausibility check is implicit in any control means adapted to receive filling level instructions, whether during the

selection phase or during the beverage delivery phase. For instance, it is inherent in the +/- controls that these must be subject to some maximum filling amount, which will be implemented at software level as a threshold value against which inputs are checked. This will naturally also apply when the same controls are (as a matter of obviousness) used for new, corrective input during delivery. The Board therefore also considers that the subject-matter of claim 1 according to auxiliary request I does not involve an inventive step.

4.1.2 The respondent-proprietor submits that the device of D1 is merely adapted to reject inputs that are not acceptable, while the amended claim instead is adapted to check whether they can be accepted. According to their argument, suitable further different actions, as deciding whether to stop or not (step S15; S18 in figure 3 of the patent specification) or to refuse a new desired filling level (step S15; S17 in figure 3) are implicit in the added feature of checking whether the input can be acceptable. This argument is however not convincing. These further steps cannot be inferred from the wording of claim 1, nor following established jurisprudence can such limitations deriving from the description be read into the claim. To the extent that the check results in an input being rejected, this corresponds to software level implementation of the necessary filling level maximum.

4.1.3 The Board thus concludes that the subject-matter of claim 1 according to auxiliary request I lacks an inventive step in the sense of Article 56 EPC.

4.2 Claim 1 of **auxiliary request II** is amended vis-a-vis the main request in that the filling level indication

is either a continuous one, i.e. the icon can be displaced in any position of level, or is stepwise, i.e. the pointing means comprises several filling level icons at predetermined positions, that is discontinuous. This covers the only two possible ways of realizing input, continuous or discontinuous. It therefore adds nothing to claim 1. Its subject-matter consequently lacks inventive step for the reasons mentioned for the previous requests.

4.3 The claims of **auxiliary requests III to V** are directed to the further features of sensing means for sensing the actual volume of beverage delivered by the pump, in data communication with the control means. Auxiliary requests IV and V add the further features that the sensor output, the sensed actual volume, is displayed in real time on the graphical interface, which (auxiliary request V) is in the form of a graphical representation showing filling progress.

4.3.1 D1 already discloses a graphical real time representation of the actual filling level, see page 5 last paragraph, bridging pages 5-6. Thus, filling of the receptacle with a beverage is visually displayed by an icon... which displays the changes of the amount of beverage dispensed into the receptacle ("Das Auffüllen eines Behälters mit einem Getränk wird durch dem Auffüllen zeitlich entsprechendes Ändern einer angezeigten Füllmenge des Behälters als Symbol... visuell dargestellt"). This allows a user to follow the process as it is carried out by the machine ("Somit kann ein Bediener die durch den Heissgetränkeautomaten durchgeführten Prozesse nur durch Beobachten des Bildschirms verfolgen..."). This is illustrated in D1 by an animation of a cup filling as explained on pages 12-13, bridging paragraph.

4.3.2 Though D1 does not expressly mention the use of a sensor, it is clear that to be able to provide a numerical indication of actual filling level, the actual filling level will be sensed in some way or another. Whether this is directly or indirectly sensed (for example by inferring it from pump running time) is not relevant, as claim 1 of these requests is unspecific as regards the nature of the sensing. Finally, D1, in the paragraph bridging pages 5 and 6, see also figures A-C and pages 12 and 13, also clearly suggests a graphical representation of actual filling. Therefore, the features of claim 1 of auxiliary requests III to V, if not already disclosed in D1 are immediately obvious therefrom.

4.4 The Board concludes that the subject-matter of claim 1 according to any of the auxiliary requests I to V also lack inventive step.

5. For the above reasons, the Board holds that taking into consideration the amendments made by the respondent-proprietor, the patent and the invention to which it relates do not meet the requirements of the Convention, and that therefore the patent must be revoked pursuant to Article 101(3)(b) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated