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**Datasheet for the decision  
of 10 January 2020**

**Case Number:** T 1821/16 - 3.2.07

**Application Number:** 08799131.1

**Publication Number:** 2227434

**IPC:** B67D1/00

**Language of the proceedings:** EN

**Title of invention:**

SYSTEMS AND METHODS FOR PROVIDING PORTION CONTROL PROGRAMMING  
IN A PRODUCT FORMING DISPENSER

**Applicant:**

The Coca-Cola Company

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 84, 111(1), 113(1), 116(1)  
RPBA (2020) Art. 12(8)

**Keyword:**

**Decisions cited:**

T 0238/88, T 0409/91, T 0523/91

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1821/16 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 10 January 2020**

**Appellant:**  
(Applicant)

The Coca-Cola Company  
Patents  
One Coca-Cola Plaza, NW  
Atlanta, GA 30313 (US)

**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 11 March 2016  
refusing European patent application No.  
08799131.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** A. Pieracci  
A. Cano Palmero

## **Summary of Facts and Submissions**

I. This appeal, which was filed within the prescribed period and in the prescribed form, lies from the decision of the examining division to refuse European patent application No. 08 799 131.1 for lack of clarity of the main request and of auxiliary requests 1 to 4.

II. With the statement setting out the grounds of appeal the appellant requested

that the decision be set aside and  
that the case be remitted to the examining division  
with the order

either to grant a patent on the basis of the main  
request or of any of auxiliary requests 1 to 4  
filed during the examination proceedings and re-  
filed together with the statement setting out the  
grounds of appeal

or to further prosecute the case on the basis of  
any of the aforementioned requests.

The appellant also requested that oral proceedings be  
arranged in the event that the Board intends to refuse  
the main request.

III. The appellant's line of argument contesting the  
decision of the examining division will be dealt with  
in detail in the reasons for the decision.

IV. Independent claim 1 of the main request, corresponding  
to the main request at the time of the examination on  
which the appealed decision is based, reads as follows:

A method for dispensing a portion-controlled amount of  
a selected product, comprising:

providing a plurality of product ingredients within a beverage dispenser apparatus (100), the apparatus being arranged such that a plurality of selectable products may be formed from the plurality of product ingredients;

receiving (410) via an input device and storing input comprising portion control preferences for the plurality of selectable products;

receiving (905) via an input device a selection of one of the plurality of selectable products and a command to dispense the selected product;

accessing (915) stored portion control information associated with the selected product;

determining (925) an amount of the selected product to dispense based on at least a portion of the portion control preferences and at least a portion of the accessed portion control information associated with the selected product; and

dispensing (930) the determined amount of the selected product in response to the received command.

- V. Independent claim 9 of the main request, corresponding to the main request at the time of the examination on which the appealed decision is based, reads as follows:

A beverage dispenser apparatus (100), comprising:  
an ingredient matrix (112) with a plurality of product ingredient packages (114A-114Q) received within respective locations, and arranged such that a plurality of selectable products may be formed from the plurality of product ingredients;  
a memory device (180) operable to store portion control information associated with at least one of the plurality of selectable products;

an input device (165) operable to receive portion control preferences for the plurality of selectable products; and  
a controller (105) operable to execute a set of instructions operable to:  
receive (410) and store the portion control preferences from the input device (165);  
receive via the input device a selection of one of the plurality of selectable products and a command to dispense the selected product;  
access at least a portion of the stored portion control information;  
determine (420) an amount of the selected product to dispense based on at least a portion of the portion control preferences and at least a portion of the accessed portion control information associated with the selected product; and  
dispense the determined amount of the selected product in response to the received command.

### **Reasons for the Decision**

1. The decision is issued in written proceedings without oral proceedings.

According to Article 12(8) RPBA 2020 (previous Article 12(3) RPBA 2007), the Board may, subject to Article 113 and 116 EPC, decide the case at any time after filing of the statement of grounds of appeal.

Given the findings and the order of the decision, the appellant's auxiliary request for oral proceedings in the event that the Board was minded not to allow the main request that the case be remitted to the examining division for either grant of a patent or for further

prosecution on the basis of that request, is no longer relevant.

The case is ready for decision on the basis of the extensive appellant's written submissions and the decision under appeal.

For this reason, the issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Articles 113(1) and 116(1) EPC.

2. Clarity of claim 1 according to the main request (Article 84 EPC)

2.1 The Board does not accept the argument of the examining division that the expressions of claim 1

" ... receiving via an input device ... input ... "

and

" ... receiving via an input device a selection ... "

indicate passive events and are not method steps carried out by the entity which is supposed to perform the claimed method, and that a lack of clarity therefore arises (see point 11.1 of the reasons for the decision).

The Board concurs with the appellant that the fact that the claimed method provides a step of receiving via an input device an "input" and a "selection" does not render the claim unclear for the person skilled in the art.

Why this should be the case and on which legal basis the examining division reaches its conclusion is not apparent from the reasons for the decision.

The statement of the examining division is therefore unpersuasive.

Even if method steps are indicated in the passive form, these steps are clearly steps defining the method and allowing the invention to be put into practice. The Board does not agree with the examining division that this would not be clearly understood by a person skilled in the art.

This objection is thus to be rebutted.

- 2.2 The Board does not accept the argument of the examining division that the expressions "portion-controlled amount", "portion control preferences" and "portion control information" are vague and unclear and leave the reader in doubt as to the meaning of the technical features to which they refer (see point 11.2 of the reasons for the decision).

The Board concurs with the appellant that the meaning of these expressions is perfectly understandable by the person skilled in the art in the field of dispensing beverages, simply from the normal meaning of the words used and in any case on the basis of common general knowledge.

The Board accepts the argument of the appellant that the person skilled in the art would understand the expression "portion-controlled amount" as indicating an amount to be dispensed which is portion-controlled, i.e. which is provided as a pre-determined quantity.



Similarly the Board concurs with the appellant that the expression "portion control preferences" would be understood by the person skilled in the art as indicating preferences, in the sense of settings or specific choices, relating to the portion control of the product to be dispensed.

Similarly the Board agrees with the appellant that the expression "portion control information" would be understood by a person skilled in the art as indicating the information related to the portion control of the product to be dispensed.

The above objections of lack of clarity are therefore also to be rebutted.

2.3 The Board does not accept the argument of the examining division that the expression

"determining an amount of the selected product to dispense based on at least a portion of the ... preferences"

leads to a lack of clarity because the term "based on" does not provide an objective and unambiguous relation between a preference and an amount of product and that, due to the expression above, it is not possible to decide whether a step of a known method falls within the scope of the claim (see point 11.3 of the reasons for the decision).

The Board concurs with the appellant that the person skilled in the art would understand that since determination of the amount is "based on" the preferences, there is a relationship between these two, nothing more, nothing less. If such a relationship is

present in a method of the prior art, then that feature is anticipated by that prior art.

The Board is of the opinion that this objection is also to be rebutted.

- 2.4 The Board does not accept the argument of the examining division that the expression "associated with" is a source of ambiguity and causes a lack of clarity of the claim, on the basis of that its interpretation is subjective, especially when it relates to linking information to a physical item (see point 11.4 of the reasons for the decision).

The Board agrees with the appellant that the person skilled in the art who is considering the claimed combination of features, that is:

"... accessing stored portion control information associated with the selected product ...",

would understand that information relevant to the process of dispensing the selected product is retrieved. A lack of clarity is not apparent.

The Board is thus of the opinion that this objection is also to be rebutted.

- 2.5 The Board does not accept the argument of the examining division that the expression

"receiving ... and storing portion control preferences"

has such a broad meaning that it could be interpreted as embodying mutually contradictory acts and that the

claims are broader than justified by the description (see point 11.7 of the reasons for the decision).

The examining division identifies the act of "programming a quantity of an ingredient to be dispensed by a beverage vending dispenser" performed by a vending operator before the dispenser is operative and the act of "choosing the amount of a beverage to be dispensed" performed by a customer buying a drink as examples of the mutually contradictory acts embodied by the claim.

The Board notes that, according to the established case law, a broad claim is not unclear *per se* and that the clarity of a claim is not diminished by its mere breadth. The broadness of a claim could not be contested on its own but only in conjunction with other criteria such as novelty, inventive step or reproducibility (see the Case Law of the Boards of Appeal, 9<sup>th</sup> edition 2019, II.A.3.3, in particular with reference to T 238/88, OJ 1992, 709, and to T 523/91, not published in OJ EPO).

However, the claims have to be supported by the description, this requirement being intended to ensure that the extent of protection as defined by the patent claims corresponds to the technical contribution of the disclosed invention to the art (see the Case Law of the Boards of Appeal, *supra*, II.A.5.1, in particular with reference to T 409/91, OJ 1994, 653).

The reasons provided by the examining division as to why a general formulation of the features of the claimed subject-matter would not be appropriate in the present case and why the claims do not correspond to

the technical contribution of the invention to the art are not convincing.

As indicated above, the mere fact that the terms of the claim are expressed broadly is not enough to object to them in respect of clarity.

The Board concurs with the appellant that the person skilled in the art would recognise that the method claimed could be applied in different situations and that these are not in contradiction with each other contrary to what stated in the decision under appeal (see points 3.34 and 3.35 of the statement setting out the grounds of appeal).

The Board is thus of the opinion that this objection is also to be rebutted.

3. Clarity of claim 9 according to the main request (Article 84 EPC)

In the appealed decision it is argued that, analogously to claim 1, claim 9 lacks clarity since the same features objected to for claim 1 are also present in claim 9 (see point 11.5 of the reasons for the decision).

The Board concurs with the examining division that the same arguments apply to claim 9 as for claim 1, and concludes that the objections of lack of clarity for claim 9 are not convincing, for the same reasons as discussed above in respect of claim 1.

4. Conclusions

It is concluded that the appellant has convincingly shown that the examining division's objections of lack of clarity with respect to claims 1 and 9 of the main request are not correct.

Therefore, the findings of the examining division and the reasoning underlying the decision under appeal cannot be upheld by the Board. Consequently, the decision under appeal is to be set aside.

However, since the decision under appeal only deals with the issue of clarity, the Board considers it appropriate to remit the case to the examining division for further prosecution in accordance with Article 111(1) EPC.

The Board notes that the decision presents a paragraph with title "III. Further observation" in which it is argued in note form that the subject-matter of claim 9 of the main request is not new in the sense of Article 54 EPC in view of the disclosure of document D1 (US 6 375 043 B1).

Since it is expressly indicated that this paragraph is not part of the decision and considering that the issue of novelty was not discussed in a sufficiently detailed manner with the appellant in the examining division's communications pursuant to Article 94(3) EPC dated 16 August 2013 and 5 March 2014 or during the oral proceedings before the examining division, the Board, in accordance with the appellant's request that the case be remitted to the examining division for further prosecution, does not consider it appropriate to address it.

**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 main request re-filed by letter dated 20 July 2016.**

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated