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**Datasheet for the decision  
of 6 February 2020**

**Case Number:** T 2262/16 - 3.2.04

**Application Number:** 10748090.7

**Publication Number:** 2473084

**IPC:** A47J31/52

**Language of the proceedings:** EN

**Title of invention:**

BEVERAGE MACHINE FOR A NETWORK

**Patent Proprietor:**

Société des Produits Nestlé S.A.

**Opponents:**

González Posada, Luis  
Mondelez Global LLC

**Headword:**

**Relevant legal provisions:**

EPC Art. 83, 84, 123(2), 54(2), 56

**Keyword:**

Sufficiency of disclosure - (yes)

Claims - clarity (yes)

Amendments - allowable (yes)

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2262/16 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 6 February 2020**

**Appellant:** Société des Produits Nestlé S.A.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
15 July 2016 concerning maintenance of the  
European Patent No. 2473084 in amended form.**

**Composition of the Board:**

**Chairman**           A. de Vries  
**Members:**         G. Martin Gonzalez  
                      W. Van der Eijk

## **Summary of Facts and Submissions**

- I. The proprietor lodged an appeal, received on 26 September 2016, against the interlocutory decision of the Opposition Division posted on 15 July 2016 concerning maintenance of the European Patent No. 2473084 in amended form, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 24 November 2016.

The Appellant-Opponent (opponent 2: Mondelez Global LLC) also lodged an appeal, received on 23 September 2016 against the above decision and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 25 November 2016.

- II. Two oppositions were filed under the ground of Article 100(a) EPC for lack of novelty and lack of inventive step and under the ground of Article 100(b) EPC for lack of sufficiency of disclosure.

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

- (D5) EP 2 085 000 A1
- (D8) US 2005/0034606 A1
- (D9) US 2009/0179042 A1
- (D12) WO 02/23735 A2

III. The Appellant-Opponent filed the following further evidence during appeal

(D14) WO 2009/004611 A2

(D15) WO 2008/001344 A2

IV. The Appellant-Proprietor requests that the decision under appeal be set aside and the patent be maintained on the basis of one of auxiliary requests 1-4, filed with the statement of grounds of appeal on 24 November 2016, or one of auxiliary requests 5, 1A-1C, 2A-2C, 3A-3C, 4A-4C, 5A-5C, filed with letter of 30 March 2017, or one of auxiliary requests 4', 4'A-4'C, filed with letter of 6 January 2020. A main request was withdrawn during oral proceedings before the Board.

The Appellant-Opponent requests that the decision under appeal be set aside and that the European patent No. 2473084 be revoked.

V. With communication dated 22 October 2019 the Board made provisional observations on the relevant issues.

Oral proceedings before the Board were held on 6 February 2020 in the absence of the Opponent 1, party as of right, who was duly summoned but chose not to attend.

VI. The independent claim according to the first auxiliary request reads as follows:

"A beverage preparation machine (1) comprising:

-an arrangement (40) for processing one or more beverage ingredients to dispense a beverage;

-a control unit (21) connected to the ingredient processing arrangement for controlling the processing of said one or more beverage ingredients;

a communication module (11) for bidirectional communication with an external network (50,511); and

a communication user-interface (10) connected to the communications module via a bidirectional data communication channel (111),

wherein the control unit (21) is prevented from accepting beverage preparation-related or service process-related control data from the communication module (11),

whereby the communication module (11) is prevented from controlling the ingredient processing arrangement."

VII. The Appellant-Opponent argued as follows:

The subject-matter of claim 1 of the first auxiliary request is unclear, insufficiently disclosed and contains subject-matter extending beyond the contents of the original application documents. It moreover lacks novelty over D9 and D8 and does not involve an inventive step starting from the teachings of D12 in combination with common general knowledge, as exemplified by D5.

VIII. The Appellant-Proprietor argued as follows:

The subject-matter of claim 1 according to the first auxiliary request is clear, sufficiently disclosed and does not contain added subject-matter. Its subject-matter is new and involves an inventive step over the cited prior art.

IX. The Opponent 1 - party as of right - did not made any submissions in the present appeal proceedings.



## **Reasons for the Decision**

1. The appeals are admissible.
2. Background

The invention is concerned with a beverage preparation machine that can be connected via a communication module to a data exchange network such as the Internet, see specification paragraph [0001]. The communication module is in turn connected to a communication user-interface. The user would use this user-interface to retrieve information from the external network, see specification paragraph [0030]. The claimed machine is protected against any upsetting involving a safety issue, risk of damage or beverage preparation process degradation originating from the network, in particular in the form of a virus or other malware, see specification paragraph [0012]. With this aim, the machine has a control unit, separate from the communication module, and connected to the ingredient processing arrangement for controlling the processing of the beverage ingredients unit of the machine. The control unit is furthermore prevented from accepting beverage preparation-related or service process-related control data from the communication module whereby the communication module is prevented from controlling the ingredient process arrangement, see paragraphs [0013], [0018] and [0019].

3. Clarity - First auxiliary request

The Appellant-Opponent argues that a lack of clarity arises due to the replacement of the phrase "characterised in that" with the term "whereby", when

adding the features of granted claim 2 to claim 1. Insofar as this amendment vis-a-vis the granted claim might per se give rise to a lack of clarity it is open to scrutiny by the Board, G3/14.

As noted by the Board in its written communication, section 6, to replace "characterised in that" by the term "whereby" is an entirely conventional amendment when changing to the two-part form. The Board is unable to see any change of the scope or the technical meaning of the claim features, which are otherwise identical to those in granted claims 1 and 2. Absent any further submissions from the Appellant-Opponent the Board confirms its view that the amendment does not introduce a lack of clarity.

4. Sufficiency of disclosure - First auxiliary request

The Board is also not convinced by the arguments against sufficiency, as set out in its preparatory communication, section 7.

The patent specification gives the skilled person sufficient guidance to put into practice the claimed feature that "the control unit (21) is prevented from accepting beverage preparation-related or service process related control data from the communication module (11)", either by a proper unidirectional configuration of the communication channel, see specification paragraphs [0022]-[0023], or by the absence of a communication channel, see paragraph [0026].

The Board is also unable to see why the skilled person would not be able to carry out the above functional feature within its whole scope. The skilled person is

an engineer with the relevant knowledge of computer hierarchy and data communication technology at their disposal. Using that knowledge such a skilled person would be able to select without undue burden which other possible embodiments or variants within the whole scope of said claimed feature, beyond the unidirectional communication channel or the absence of communication channel of the disclosed examples, are workable and/or fall within the scope of the patent or not.

Absent any further submissions by the Appellant-Opponent, the Board thus confirms its view that the claimed invention is sufficiently disclosed.

5. Added subject-matter - First auxiliary request

Amended claim 1 introduces the feature of a communication user-interface connected via a bidirectional channel to the communication module. The claim is further amended to specify that the communication of the communication module with the external network is also bidirectional.

5.1 The Appellant-Opponent objects that these features were extracted in isolation from figure 3, omitting other features shown there that would be closely linked to the bidirectional data communication, namely that the user-interface is in the form of a touch-screen, that the network should be restricted to the Internet or intranet only and other features from the embodiment of figure 3. These omissions would give rise to an unallowable intermediate generalisation.

5.2 The Board is not convinced by the arguments of the Appellant-Opponent.

According to established case law it will normally not be allowable to base an amended claim on the extraction of isolated features from a set of features originally disclosed only in combination, e.g. in a specific embodiment in the description. Such a generalisation is justified only in the absence of any clearly recognisable functional or structural relationship among the features of the specific combination or if the extracted feature is not inextricably linked with those features (see Case Law of the Boards of Appeal (CLBA), 9th Edition, 2019, II.E.1.9).

5.3 Basis for the addition of a communication user-interface connected to the communication module can be found in original claim 9, directly dependent on original claim 1. Original page 7, lines 1-7, provides the basis for the further restrictions that the communication with the network and between the module and user-interface is bidirectional. The cited passage discloses how the network, communication module and its user-interface operate:

"The user would use this user-interface to retrieve information from the network.... Such user-interfaces may include screens and touch screens, buttons, switches, etc... as known in the art."

The term "user-interface" defines the means by which man and machine interact, i.e. act reciprocally on each other. In this case this is to allow the user to access or query the network which then returns the retrieved information, which indeed corresponds to the normal meaning of this ubiquitous term. For the skilled reader willing to understand, this first sentence alone directly and unambiguously and in all generality

already suggests a user interface with bidirectional communication ability. This follows from the non-limitative list of examples in the following sentences ("such .... may include ... etc").

Since this is part of the general description of the invention, it is not disclosed in the context of any specific embodiment. These features are moreover disclosed without any clear structural or functional link with the other features cited by the Appellant-Opponent, nor is it apparent to the Board that such a link exists. The added features are associated to the user information retrieval functionality as explained therein. This functionality is obtained only in combination with the network, the communication user-interface and the communication module, that are also present in the amended claim 1. The Board does therefore not see in the above amendments any unallowable intermediate generalisation.

5.4 As otherwise the subject-matter of claim 1 is a combination of originally filed claims 1 and 2, the Board concludes that its subject-matter does not extend beyond the contents of the originally filed application documents.

6. Novelty - First auxiliary request

The Appellant-Opponent has raised objections of lack of novelty over the disclosures of D9 and D8.

6.1 It is in dispute whether any of the known machines comprises a communication module for bidirectional communication with an external network.

6.1.1 In this context, the Appellant-Opponent contends that the limits of the machine defined in the contested claim are not specific, in particular that its components need not be co-located in a housing. They accordingly read the machine defined by claim 1 as also including any external device connected to the machine via a communication channel. The Board disagrees. The skilled person who reads the claim in context and constructively with the intent of making technical sense, would understand the term "machine" in its usual sense as a physical independent body or structure. Indeed, the claim is directed to "a beverage preparation machine", which is only reasonably understood in the technical field as a physical unit, to be sold and installed as such. There is furthermore no suggestion in the whole description that it could be otherwise. That it may be connected to a network, as described in specification paragraph [0001], does not make accessible external devices part of the claimed machine. The Board thus concludes that the claimed communication module must be an integral part of a stand-alone machine.

6.1.2 The Board also finds that the requirement that the communication module be "for bidirectional communication with an external network", read in context by the skilled person intent on understanding the claimed invention implies more than a mere potential of an isolated feature. Rather it imposes a functional limitation of the communication module as part of that machine, requiring thus actual bidirectional communication if the machine and/or user so requires, without further modification. Thus a known communication module that might be suitable for bidirectional communication but is not configured to do so, does not anticipate the claimed feature. Indeed,

such a communication module, without further modification, would not be suitable to provide the machine with the claimed functionality.

- 6.2 Turning to the D8 disclosure, the black boxes 62, 63, 64, 65 are part of the known coffee machine. They are fitted with transponders and can capture and pass on relevant information, see paragraphs [0023]-[0024]. They however do not have a communication user-interface connected to them and cannot therefore anticipate the communication module as claimed. The reader unit 70 is an external device not forming part of the machine, see paragraphs [0025], [0032], [0033] and figures 3,4. Indeed, these passages describe a single unit 70 for wirelessly reading all transponders of the machine. The data can then be passed on via a USB cable, or via the Internet to a computer. Data flow is thus one-way. Since the unit 70 is not part of the machine, and is not configured for bidirectional communication with an external network it does also not anticipate the claimed communication module, whether or not the known reader unit 70 has a communication user-interface connected to it.

The subject-matter of claim 1 is thus novel with respect to D8.

- 6.3 The opposition division held, as also argued by the Appellant-Opponent, that the wireless communication unit 312 of the inventory communication unit 310 described in paragraph [0172] of D9 in the form of a cell phone is intended for bidirectional communication with an external network, see impugned decision page 11. Since a cell phone inherently discloses a user communication interface, it would anticipate the claimed communication unit.

However, as explained above, to anticipate the claimed feature the known communication unit, as installed and configured in the machine, must indeed provide the bidirectional communication with the network. In the present case, the cell phone is described as one possible implementation in a list of possibilities to carry out a wireless communication of the built-in inventory communication module 310: "...comprises wireless communication unit 312 which can take the form of a cell phone, user equipment unit, mobile station, or computer or the like with mobile termination", see D9 paragraph [0172]. The disclosed cell phone is only configured to wirelessly report to a central station 314 that a bin of the receptacle section has a low inventory of receptacles, see paragraphs [0027], [0077] and [0172]-[0173]. Insofar as D9 thus suggests the use of a cellular phone it is only as a means to pass on information, but not receive any. The only unambiguous disclosure derivable from D9 is that the communication unit 312 is configured to provide unidirectional communication to the network. There is therefore in D9 no clear and unambiguous disclosure of a machine with a communication module for bidirectional communication with the network, as claimed.

The Appellant-Opponent alternatively submits that the, implicitly described, communication module of the credit account management system 700 also embodies a communication unit in the sense of the contested patent. However, this module must be configured to provide instructions to the control unit 40 of the ingredient processing arrangement. For example, the credit management system grants permission to deliver a beverage, see paragraph [0184], last sentence. This communication module does not therefore fulfil the



claimed feature that the control unit is prevented from accepting beverage preparation-related control data from the communication module. The credit account management system can thus also not be seen as including a communication module within the sense of the contested claim.

6.4 The Board thus concludes that the subject-matter of claim 1 is new over D8 and D9.

7. Inventive step - First auxiliary request

The Appellant-Opponent objects lack of inventive step starting from D12. D12, see figure 1, discloses a beverage preparation machine 40 with associated controller 42. Figure 1 further shows the controller connected to a remote data collection portion 52, which may be part of an external network for sending data related to the machine operation, see page 5, lines 4-11. The data is sent through unidirectional line 54, see page 10, lines 3-15. This information may be used at the external location 52 by the owner of the machine to remotely monitor its operation. Additionally, a supplier 56 may be externally connected to the data collection portion 52 and also use that information. The supplier 56 may in turn provide additional information to the operator of the machine 40 via unidirectional communication line 60 to the machine 40, see bridging paragraph pages 10-11.

The machine 40 may optionally have further sensors 64, see figure 2. These sensors have an associated transmission device 66 for sending information regarding machine inputs 70 (e.g. measured input power) via one-way link to the remote data collection point 52, see page 12, lines 12-ff.

The known machine 40 therefore implicitly discloses communication modules in the form of transmitters associated with the controller 42 or with the transmission device 66 for sending information via line 54 and a receiver for receiving the incoming information on separate line 60.

- 7.1 The Appellant-Opponent considers the respective components for transmission respectively reception of data on separate lines 54 and 60 to jointly constitute a bidirectional communication module. However, and this is common ground between the parties, document D12 at least does not describe a communication user-interface connected to that communication module via a bidirectional data communication channel.
  
- 7.2 Vis-a-vis D12, the claimed communication module is thus bidirectionally connected with both the user interface and the external network. This enables bidirectional communication by the user with the external network via the user interface. The user can thus actively retrieve information from the network, see specification paragraph [0030]. Since the claimed machine control unit is further prevented from accepting beverage preparation-related or service process-related control data from the communication module, the risk of beverage preparation process degradation from malware coming from the network is prevented, see specification paragraph [0012]-[0013]. The objective technical problem can thus be formulated as how to provide safe user information retrieval functionality using the machine itself.

7.3 In this respect, document D5 teaches the use of an end user interface 104 in a brewing machine 100 that is connected to an external network 106 via an external network interface for user information retrieval from a remote resource 107. In contrast to the claimed invention D5 teaches that the external network interface 105 and also the end user interface 104 are both connected to the machine controller or processor 102. Therefore, D5 at most teaches the skilled person, to connect the user interface and a bidirectional communication module to the controller 42 of the known machine of D12. There is however no suggestion in D5 to provide user network connectivity while also preventing the machine controller from accepting network incoming control data. On the contrary, it is explicitly described as advantageous in D5 that the processor 102 of D5 can accept control data related to the beverage preparation from the external network, for example programming updates, altered brewing times or brewing process steps, see D5 paragraph [0029]. Therefore, if the skilled person were to combine the teachings of D12 and D5, they would not arrive at the claimed subject-matter.

7.4 The Board arrives at the same conclusion if the skilled person were to draw on common general knowledge. Indeed, the skilled person seeking to implement a bidirectional user information retrieval channel to the external network in the known machine of D12 would use as a matter of obviousness existing components of the machine, in this case the communication modules that must be integral to the controller 42. Consequently, the controller 42 would then be reconfigured to handle the user requests for information to the external network and associated data exchange. As a result, and

in contrast to the claimed machine, the controller would not be prevented from accepting control data from the external network.

The Appellant-Opponent has further failed to submit any convincing evidence that such controller prevention features would be common general knowledge in the field of commercial beverage preparation. D14 and D15 cited in this respect are in the rather remote field of sensitive data handling in military or financial environments, see D14, page 1, lines 7-9, and D15, page 1, lines 10-14.

- 7.5 For these reasons the Board holds that the subject-matter of claim 1 involves an inventive step over the cited prior art.
  
8. In the light of the above the Board finds that the claims as amended according to the first auxiliary request meet the requirements of the EPC. The Board is further satisfied that the consequential amendments to the description bringing it into line with the amended claims are unobjectionable, and these were also not objected to by the Appellant-Opponent. The Board concludes that the patent can be maintained as amended pursuant to Article 101(3)(a) EPC.

## Order

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain European patent No. 2473084 as follows:

**Claims:**

No. 1-13 of auxiliary request 1, filed with letter of 24 November 2016,

**Description:**

Pages 3 and 4 as filed during oral proceedings before the Board on 6 February 2020,  
Pages 2, 5 and 6 of the patent specification,

**Drawings:**

Figures: 1-3 of the patent specification.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated