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Datasheet for the decision of 19 November 2019

Case Number: T 0118/17 - 3.2.07

Application Number: 13188183.1

Publication Number: 2712813

IPC: B65B3/24, B67C3/20

Language of the proceedings: EN

Title of invention:
Devices and methods for packaging beverages

Applicant:
The Coca-Cola Company

Headword:

Relevant legal provisions:
EPC Art. 56, 84, 123(2)

Keyword:
Inventive step - (yes)
Amendments - added subject-matter (no)
Claims - clarity (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
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Office européen des brevets

Beschwerdekammern

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Case Number: T 0118/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 19 November 2019

Appellant: (Applicant)	The Coca-Cola Company One Coca-Cola Plaza, NW Atlanta, GA 30313 (US)
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 15 July 2016 refusing European patent application No. 13188183.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	K. Poalas
Members:	V. Bevilacqua
	C. Brandt

Summary of Facts and Submissions

I. The applicant (appellant) lodged an appeal against the decision of the examining division to refuse European patent application No. 13 188 183.1, said last being a divisional of the European patent application No. 07 799 805.2.

II. The appellant requested that the examining division's decision be set aside and that a patent be granted according to its main request on file, see the letter dated 14 October 2019, i.e. that a patent be granted in the following version:

Description, pages

1, 2 and 4 to 9	filed as main request with letter dated 10 October 2019,
3 and 10	filed with letter dated 14 October 2019,

Claims

1-9	filed with letter dated 14 October 2019,
10-13	filed as main request with letter dated 10 October 2019,

Drawings

Figure 1	as originally filed,

or in the alternative according to one of the auxiliary requests filed with letter dated 10 October 2019.

III. The following documents are mentioned in the appealed decision:

D1: US 5 865 225 A;
D2: EP 0 170 209 A2;
D3: US 3 018 804;
D4: US 2004/084104 A1;
D5: US 2 699 718;
D6: EP 0 354 130.

IV. Independent **claim 1 of the main request**, reads as follows:

"A method for decreasing container-to-container variation in particulate content in a packaged beverage, wherein the particulates are pulp and the beverage is a pulpous beverage, the method comprising:
dispensing a first portion of a beverage comprising a first portion of liquid and a portion of said particulates insoluble in the liquid from a first dispenser (16) suitable for dispensing the first portion of the beverage;
dispensing a second portion of the beverage comprising a second portion of liquid from a counterpressure filler (18), wherein a plurality of containers (22a, 22b, 22c) receives the first portion of the beverage from the first dispenser and receives the second portion of the beverage from the counterpressure filler; and
sealing each container to form the packaged beverage,

wherein the first portion of the beverage comprises all of the particulates and the second portion of the beverage is particulate free."

Independent **claim 7 according to the main request** reads as follows:

"A system (10) for packaging a first beverage having a reduced container-to-container variation in particulate content, wherein the particulates are pulp and the beverage is a pulpous beverage, the system comprising:
a first source (12) comprising a first portion of the first beverage comprising a first portion of liquid and a portion of said particulates insoluble in the first portion of liquid;
a second source (14) comprising a second portion of the first beverage comprising a second portion of liquid;
a dispenser (16) connected to the first source suitable for dispensing the first portion of the beverage;
a counterpressure filler (18) connected to the second source;
a plurality of first containers (22a, 22b, 22c) for receiving the first portion of liquid and the portion of particulates from the dispenser and receiving the second portion of liquid from the counterpressure filler; and
a sealer (20) for sealing the plurality of first containers to form a packaged first beverage, wherein the first portion of the beverage comprises all of the particulates and the second portion of the beverage is particulate free."

V. As the present decision was taken on the basis of the main request only, the text of the claims of the auxiliary requests is not relevant thereto.

Reasons for the Decision

1. Amendments

1.1 Claims 1 and 7

Paragraphs [006] and [0007] of the application as filed (corresponding to paragraphs [006] and [0007] of the parent application, see also claim 25 of the parent application and clause 25 of the application) relate to a method for decreasing container-to-container variation in particulate content in a packaged beverage, wherein the particulates are pulp and the beverage is a pulpous beverage.
This method comprises:
dispensing a first portion of a beverage comprising a first portion of liquid and a portion of particulates insoluble in the liquid from a first dispenser (paragraph [6] mentions a chamber, a dispenser to pour the beverage from this chamber being implicit) suitable for dispensing the first portion of the beverage;
dispensing a second portion of the beverage comprising a second portion of liquid from a second chamber, with a counterpressure filler (see paragraph [007]), wherein a plurality of containers receives the first portion of the beverage from the first dispenser and receives the second portion of the beverage from the counterpressure filler; and sealing each container to form the packaged beverage, wherein the first portion of the beverage comprises all of the particulates and the second portion of the beverage is (substantially) particulate free.

The Board considers that a skilled person would automatically read the "particulate free" feature as

corresponding to "substantially particulate free", i.e. as both containing such a low amount of particulates, that their effect on the machine and the method is to be considered as being negligible.

The above-mentioned passages provide therefore the basis for the independent claims 1 and 7 of the main request.

1.2 Description

The description has been amended to recite that the particulates are pulp and that the beverage is pulpous. Basis for this amendment can be found in paragraphs [0006], [0015], [0018] and in clauses 7 and 25 of the application as filed (respectively corresponding to paragraphs [0006], [0015] and [0018] and to claims 7 and 25 of the parent application). Throughout the amended description, references to embodiments that fall outside the scope of the claims have been deleted.

1.3 The amendments made satisfy therefore the requirements of Articles 76(1) and 123(2) EPC.

2. Clarity

Under point III.5.1.1 of the impugned decision the examining division argues that since the then independent claims do not exclude the first dispenser being another counterpressure filler, the claims encompass “embodiments which do not solve the subjective technical problem”.
The Board notes that the examining division neglects the feature that the first dispenser is “suitable for dispensing the first portion of the beverage”. Examples of several suitable types of dispensers are set out in

paragraph [0026] of the application as filed.

Under point III.5.1.2 of the impugned decision the examining division argued that the then independent claims did not exclude particulates filled by means of the counterpressure filler. This objection is moot in view of the independent claims of the present main request, which recite that the second portion of the beverage is particulate free, and hence the claims clearly do not require that the pulp is filled by the counterpressure filler.

The examining division's comments under point III.5.2 of the impugned decision are also now moot, since the claims use now the "for" language.

For the above-mentioned reasons the Board considers that the requirements of Article 84 EPC are met.

3. Inventive step

3.1 According to the impugned decision, none of the available requests involved an inventive step, starting from D5 and taking into account the teachings of either D2 or D6.

Closest prior art

3.2 D5 discloses a system for filling containers with a carbonated beverage. As shown in Figure 1, a syruping apparatus 105 is used to dose bottles with syrup prior to their being filled with carbonated water from a counterpressure filler 93.

3.3 The subject-matter of claims 1 and 7 differs from the system and the method known from D5 in that inter alia

the beverage comprises particulates in a liquid, whereby the particulates are pulp.

3.4 Neither of the two fillers in D5 is taught as being suitable for dispensing particulates-containing liquids, whereby the particulates are pulp.

3.5 Thus, D5 neither relates to the technical field of dispensing particulates-containing liquids, whereby the particulates are pulp, nor does it teach an apparatus that has the necessary technical features for such a purpose. Indeed, there is no disclosure whatsoever in D5 to suggest that it is either suitable for use with particulates-containing beverages, whereby the particulates are pulp, or might usefully be modified for such use.

3.6 Therefore, the Board considers that D5 is not a realistic starting point for the consideration of inventive step based upon the problem and solution approach and that accordingly it does not represent the closest prior art.

3.7 D3 discloses a counterpressure filler specifically designed for pulpous beverages (orange crush, see column 3, line 26), which can dispense both liquids and pulp and avoids the problem of clogging due to a specific valve design (35, see figure 3 and column 2, lines 44-56).

3.8 Therefore, the Board considers the method and the system disclosed in this document as a realistic starting point for discussing inventive step and that D3 is to be considered to represent the closest prior art.

3.9 More in detail, D3 discloses a system (see figure 1) which is suitable for packaging a first beverage having a reduced container-to-container variation in particulate content, wherein the particulates are pulp and the beverage is a pulpous beverage (orange crush), the system comprising:
a first source (12, the bowl, column 3, lines 28-32) comprising a first portion of liquid and a first portion of said particulates (pulp) insoluble in the first portion of liquid (column 3, lines 22-28);
a dispenser (counterpressure filler 44) connected to the first source;
a plurality of first containers (27) for receiving the first portion of liquid and the first portion of particulates from the dispenser; and
a sealer (see column 4, line 4) for sealing the plurality of first containers to form a packaged first beverage, wherein the first portion of the beverage comprises all of the particulates.

3.10 D3 discloses also a method for decreasing container-to-container variation in particulate content in a packaged beverage, wherein the particulates are pulp and the beverage is a pulpous beverage (column 3, line 26) the method comprising:
dispensing a first portion of a beverage comprising a first portion of liquid and a portion of said particulates (pulp) insoluble in the liquid from a first dispenser (counterpressure filler 44) suitable for dispensing the first portion of the beverage;
wherein a plurality of containers (27) receives the first portion of the beverage from the first dispenser; and
sealing each container to form the packaged beverage, wherein the first portion of the beverage comprises all of the particulates.

Differences over D3

3.11 When compared to claim 1, D3 fails to disclose a method comprising the step of dispensing a second portion of the beverage comprising a second portion of liquid, said liquid being particulate free and being dispensed from a counterpressure filler.

3.12 When compared to claim 7, D3 fails to disclose a system comprising a second source comprising a second portion of the beverage comprising a second portion of liquid, with a counterpressure filler dispenser connected thereto, whereby the second portion of the beverage is particulate free.

Effect - problem to be solved

3.13 D3 addresses the clogging problems arising from the use of particulates with counterpressure fillers by providing a cut-off valve element for a counterpressure filler which permits solid material to pass downwardly through the element but which prevents gas from passing upwardly from a container (see col. 1, lines 13-32 of D3).

3.14 Starting from D3, the objective technical problem solved by the present invention may be seen in the provision of an alternative method for packaging pulpous beverages and a corresponding system for packaging pulpous beverages.

Discussion of inventive step.

3.15 The present invention solves the above-mentioned problem by dividing the beverage into different

portions and by using two separate dispensers, each suitable for dispensing its respective portion(s).

3.16 None of the available prior art documents contains a teaching suitable, when applied to the the method and system disclosed in D3, to cast doubts on inventive step of claims 1 and 7 of the main request for the following reasons.

3.17 D1, D2 and D6 relate to methods and systems using a single filling head, and cannot teach the distinguishing features identified above.

3.18 D4 and D5 are the only available documents showing a container filled with two fillers acting separately from each other.

3.19 D4 however relates to hot filling (see figure 1) and does not mention counterpressure filling.

3.20 D5 teaches the dispensing of a second pulp-free portion of the beverage from a counterpressure filler (see column 5, lines 39-52).

3.21 The skilled person would however not consider using two counterpressure fillers in sequence (the counterpressure filler (93) of D5 after the one of D3) as an obvious measure, because this would result in losing the advantages linked to the the fist counterpressure filling step according to D3.

3.22 As a consequence of the above, the Board considers that the subject matters of independent claims 1 and 7 involve an inventive step over the available prior art.

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 with the order to grant a patent in the following version:

Description, pages

1, 2 and 4 to 9	filed as main request with letter dated 10 October 2019,
3 and 10	filed with letter dated 14 October 2019,

Claims

1-9	filed with letter dated 14 October 2019,
10-13	filed as main request with letter dated 10 October 2019,

Drawings

Figure 1	as originally filed

The Registrar: The Chairman:

G. Nachtigall K. Poalas

Decision electronically authenticated