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**Datasheet for the decision
of 18 September 2019**

Case Number: T 0185/17 - 3.2.04

Application Number: 12193324.6

Publication Number: 2612578

IPC: A47J31/42

Language of the proceedings: EN

Title of invention:

System, package, apparatus and method for dosing coffee beans

Applicant:

Koninklijke Douwe Egberts B.V.

Headword:

Relevant legal provisions:

EPC Art. 54(2), 111(1)

Keyword:

Novelty - (yes)

Appeal decision - remittal to the examining division (yes)

Decisions cited:

Catchword:



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Case Number: T 0185/17 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 18 September 2019

Appellant: Koninklijke Douwe Egberts B.V.
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Representative: V.O.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 24 August 2016
refusing European patent application No.
12193324.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Martin Gonzalez
Members: S. Oechsner de Coninck
T. Bokor

Summary of Facts and Submissions

I. The appellant lodged an appeal, received on 3 November 2016, against the decision of the examining division sent on 24 August 2016 to refuse the European patent application No. 12 193 324.6, and simultaneously paid the required fee. The grounds of appeal were received on 23 December 2016.

II. In its decision the examining division maintained that the application did not meet the requirements of Articles 52(1) and 54 EPC due to lack of novelty with regard to the following document:

(D10) DE 10 2007 051 385 A1

In the present decision reference is also made to the following document:

(D5) EP 0 409 759 A1

III. Since the request for oral proceedings was withdrawn (see below), the board made the decision in written proceedings.

IV. The appellant requests that the decision under appeal be set aside and that a patent be granted based on the following documents as the main request:

Claim:

No. 1 as filed with letter of 10 September 2019.

Description:

Pages 1 - 30 as filed with letter of 10 September 2019.

Figures

Pages 1/21 - 21/21 as originally filed.

The appellant further stated in its letter dated 10 September 2019 that "if your board intends to decide to set aside the decision of the Examining Division based on the enclosed Main Request then the Request for Oral Proceedings is herewith withdrawn and it is requested that the board remits the case to the Examining Division."

- V. The wording of independent claim 1 of the main request is as follows:

"A coffee bean package (2), provided with at least one circumferential wall (8), a top wall (8A), a bottom (9), and a coffee bean outlet (7), near the bottom, with the walls and bottom enclosing an inner space, a first coupling part (12, 24) for coupling, and uncoupling, the coffee bean package with an apparatus (3) provided with a grinder, and reclosable closing means (10) preventing coffee beans in the coffee bean package being exposed to ambient air, wherein the bottom is provided with at least one tapering wall part so that in a condition coupled with an upstanding apparatus, coffee beans flow automatically towards the coffee bean outlet under the influence of gravity, wherein the closing means (10) are provided with a second coupling part (26) for coupling and uncoupling with the apparatus, wherein the closing means are provided with a sloping top so that coffee beans on the top side slide down along the closing means, wherein the first coupling part (12, 24)

is provided near the coffee bean outlet (7), characterized in that the coffee bean package (2) has approximately a bottle shape, in that the first coupling part (24) is provided on the neck of the package (2), and in that the first coupling part (24) and the second coupling part (26) are arranged as parts of a bayonet closure."

Reasons for the Decision

1. The appeal is admissible.
2. The claimed invention

The parent application (WO 2010/064902 A2) related to different aspects of a system for dosing coffee beans, comprising a coffee apparatus with a coffee grinder and a coffee bean package that can be directly coupled to the apparatus.

The present divisional application (publication number EP 2 612 578 A2) concerns the coffee bean package which is arranged for coupling to and uncoupling from the apparatus by means of a first coupling part, see divisional application paragraph [0036], also comprising reclosable means which prevent coffee beans in the package from exposure to ambient air and from falling out of the package, wherein the reclosable means are provided with a second coupling part arranged to be connected to the apparatus, so that the apparatus can open the reclosable means, see divisional application paragraphs [0036]-[0038]. Thus the coffee beans in the package also remain "relatively preserved", between different grinding times, using beans from the same bean package, see paragraph [0022].

3. Amendments

Independent claim 1 is based on a combination of the originally filed independent claim 28 and dependent claim 29 of the parent application (which also correspond to the originally filed claims 28 and 29 of the present divisional application) with further amendments. In particular, the claim now further specifies that the first coupling part is provided near the coffee bean outlet, that the coffee bean package has approximately the shape of a bottle, wherein the first coupling part is provided on the neck of the package, and that the first coupling part and the second coupling part are arranged as parts of a bayonet closure, as originally disclosed in the parent application description page 27, lines 6-12 and lines 28, 29 for the second coupling part; and also correspondingly in paragraphs [0075] and [0076] of the original divisional application (EP 2 612 578 A2).

Thus the amendments to claim 1 have a clear basis in the parent application and in the original application as filed.

The board thus concludes that the amendments to the claim do not add subject-matter that extends beyond the contents of the application as filed, Article 123(2) EPC, and of the parent application as filed, Article 76(1) EPC.

4. Novelty

4.1 The examining division held that claim 1 of the then valid main request lacked novelty over D10. Claim 1 of the present main request filed during appeal proceedings includes the further features that the

coffee bean package has approximately a bottle shape, in that the first coupling part is provided on the neck of the package, and in that the first coupling part and the second coupling part are arranged as parts of a bayonet closure. These features are not disclosed by D10, where the shape of the bean package cannot be said to resemble a bottle shape. The first coupling part for connecting the package to the machine is also located at the bottom periphery of the package and not at the "neck". Additionally, neither the first coupling part nor the second coupling part (for connecting the reclosable means 10 to the apparatus) are of the bayonet type.

- 4.2 As regards the other documents on file, document D5 describes a coffee bean package 1 having a bottle shape with a coffee bean outlet 11 having reclosable closing means 8. However, D5 fails to disclose a second coupling part for coupling the reclosable closing means 8 (screw cap 8) to the apparatus, as claimed. It also does not disclose a bayonet type connection for coupling the package to the apparatus, but rather a thread 11 and an abutting surface 3 to hold the known package in inverted position on the dosing device 12.

None of the other documents on file discloses a package having the claimed bottle shape with a coffee bean outlet having reclosable closing means. They are thus less relevant to novelty.

- 4.3 The board thus concludes, in view of the prior art on file, that the subject-matter of claim 1 of the main request is new with the meaning of Article 54(2) EPC.

5. Remittal

5.1 In its last written submissions of 10 September 2019 (page 4), the appellant states that it requests a remittal "if your board intends to decide to set aside the decision of the Examining Division based on the enclosed Main Request..." which the board interprets as a request for remittal "if the Main Request is found to overcome the substantive objections in the decision" so that setting it aside is justified.

The only reason for refusing the application in the impugned decision was lack of novelty. Given that this objection has been addressed by the new main request, the board is in a position to set aside the contested decision. The board thus interprets, accordingly, that the appellant requests remittal to the examining division for further prosecution according to Article 111(1) EPC.

5.2 Since the main purpose of the appeal proceedings is to review the decision of the department of first instance, remittal in accordance with Article 111(1) EPC is normally considered by the boards in cases where essential questions regarding the patentability of the claimed subject-matter have not yet been examined and decided on by the department of first instance, see Case Law of the boards of Appeal, 9th edition 2019, V.A.7.4. The examining division, in the present case, has not yet examined the essential question of inventive step.

5.3 The board therefore considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the examining division for further prosecution on the basis of the main request, particularly as the appellant requests the remittal, as set out above.

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.

The Registrar:

The Chairman:



G. Magouliotis

G. Martin Gonzalez

Decision electronically authenticated