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**Datasheet for the decision
of 27 July 2021**

Case Number: T 0943/17 - 3.4.03

Application Number: 12183955.9

Publication Number: 2562728

IPC: G07F13/06, A47J31/40, B67D1/00

Language of the proceedings: EN

Title of invention:
Method and apparatuses for providing a selectable beverage

Applicant:
The Coca-Cola Company

Headword:

Relevant legal provisions:
EPC Art. 56, 125

Keyword:
Inventive step - after amendment - (yes)
General principles - Double Patenting (No)

Decisions cited:
T 0871/14, G 0004/19

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0943/17 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 27 July 2021

Appellant: The Coca-Cola Company
(Applicant) One Coca-Cola Plaza, NW
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Representative: Dehns
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 November
2016 refusing European patent application No.
12183955.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: A. Böhm-Pélissier
C. Heath

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division to refuse European patent application No. 12 183 955. The refusal was based on the ground of lack of inventive step (Article 56 EPC).
- II. The present application is a divisional application of the European patent application No. 08 798 790, which was granted as decided in **T 871/14** and has similar claims and a similar description.
- III. Reference is made to the following documents. In Parentheses the labelling of **T 871/14**:
- D3 (D12)= WO 2006/058692 A1
- D4 (D8) = US 5 997 236 A
- D7 (D13)= BAEYENS F et al: "Parameters of human evaluative flavor-flavor conditioning", LEARNING AND MOTIVATION, ACADEMIC PRESS, AMSTERDAM, NL, vol. 26, no. 2, 1 May 1995, pages 141-160, XP004537564, ISSN: 0023-9690, DOI: 10.1016/0023-9690(95)90002-0
- D8 = Frank Baeyens et al: "Flavor-flavor and color-flavor conditioning in humans", Learning and Motivation, vol. 21, no. 4, 1 November 1990, pages 434-455, XP055079114, ISSN: 0023-9690, DOI: 10.1016/0023-9690(90)90025-J
- IV. In response to a communication of the Board, the Appellant Applicant filed a revised set of requests.

- V. The Appellant (Applicant) **requests** that the decision under appeal be set aside and that a patent be granted on the basis of the Main Request or the 1st to 2nd Auxiliary Requests, all filed with letter dated 12 November 2020.
- VI. The application documents of the Main Requests are as follows:
Claims: 1-12 as filed with letter dated 12 November 2020 (Main Request);
Description: pages 1-25 as filed with letter dated 4 December 2020;
Drawings: sheets 1/2-2/2 as originally filed.
- VII. Underlining and ~~strike-through~~ was added by the Board.
- VIII. **Claim 1** of the Main Request reads:
A method for providing a beverage having a separately selected color from a post-mix beverage dispensing system (10) comprising:
a. providing at least two uncolored beverage bases ($B_1, B_2 \dots B_N$) for dispense from the post-mix beverage dispensing system;
b. separately storing at least two unflavored colorants ($C_1, C_2 \dots C_N$) in the post-mix beverage dispensing system;
c. receiving a request for a selected beverage base and the separately selected color with a computer processor (18), wherein the separately selected color and/or beverage base is selected by an automated randomizing program (Z); and
d. in response to the selection of the selected beverage base and the separately selected color, automatically dispensing through a single dispensing nozzle (16) the selected beverage base and at least one of the colorants to provide the beverage having the

separately selected color and a beverage flavor independent from the separately selected color, and vice versa.

IX. **Claim 7** of the Main Request reads:

A post-mix beverage dispensing system (10) for providing a beverage having a separately selected color, the post-mix beverage dispensing system comprising:

a. at least two sources for providing at least two uncolored beverage bases ($B_1, B_2 \dots B_N$) for dispense from the post-mix beverage dispensing system;

b. at least two colorant storage containers (12) for separately storing at least two unflavored colorants ($C_1, C_2 \dots C_N$) in the post-mix beverage dispensing system; and

c. a computer processor (18) for receiving a request for a selected beverage base and the separately selected color, wherein the separately selected color and/or beverage base is selected by an automated randomizing program (Z);

the post-mix dispensing system (10) being arranged to automatically dispense in response to the selection of the selected beverage base and the separately selected color, the selected beverage base and at least one of the colorants through a single dispensing nozzle (16) to provide the beverage having the separately selected color and a flavor independent from the separately selected color, and vice versa.

X. The Appellant argued essentially as follows in relation to inventive step:

(a) D7 and D8 cannot be considered as closest prior art;

(b) D3 did not teach or suggest the use of any random selection element;

(c) even if D3 was considered in combination with the only other prior art of potential relevance (D4), the combination of features set out in the claims would not be provided.

Reasons for the Decision

1. The appeal is **admissible**.

2. The invention as claimed

2.1 The application is concerned with providing a beverage from a post-mix beverage dispenser in which the colour and beverage base of the beverage is selectable independently from the flavour of the beverage.

2.2 It is desirable to provide users of post-mix beverage dispensers with more options. Conventionally, this is achieved by increasing the number of beverage syrups provided in the dispenser. This has the undesirable effect of a corresponding increase in the size and complexity of the dispensers. This is overcome in the present invention by providing uncoloured beverage bases and separately storing / adding unflavoured colorants and uncoloured flavours.

2.3 In the present case the colour and/or the beverage base is selected by an automated randomizing program.

3. Main Request

3.1 Amendments . Articles 123(2) and 76(1) EPC

3.1.1 Originally filed claim 1 has been amended to recite that the colorants are "unflavoured" and that the beverage has "a beverage flavour independent from the

separately selected colour, and vice versa". Sufficient basis for these amendments is given in the description as originally filed on page 9, line 4, and page 13, lines 14 to 15. The amendment that the dispensing is through "a single dispensing nozzle" has a basis on page 19, lines 5 to 7, in combination with Fig. 1. The application as originally filed only discloses one single nozzle 16.

- 3.1.2 Furthermore, claim 1 has been amended to require that: "*the separately selected color and/or beverage base is selected by an automated randomizing program*". This feature is based upon the combination of original dependent claims 3 and 4 (claims 3 and 4 of the parent application as filed). Page 16, lines 16-21, provides a basis that the randomizing recipe mentioned in lines 5-6 of page 16 for selecting a random beverage base is performed by a randomizing program. Consequently, the Main Request complies with the requirements of Article 123(2) EPC. The description as filed is identical with that of the parent application as filed. Hence, the Main Request complies with the requirements of Article 76(1) EPC as well.

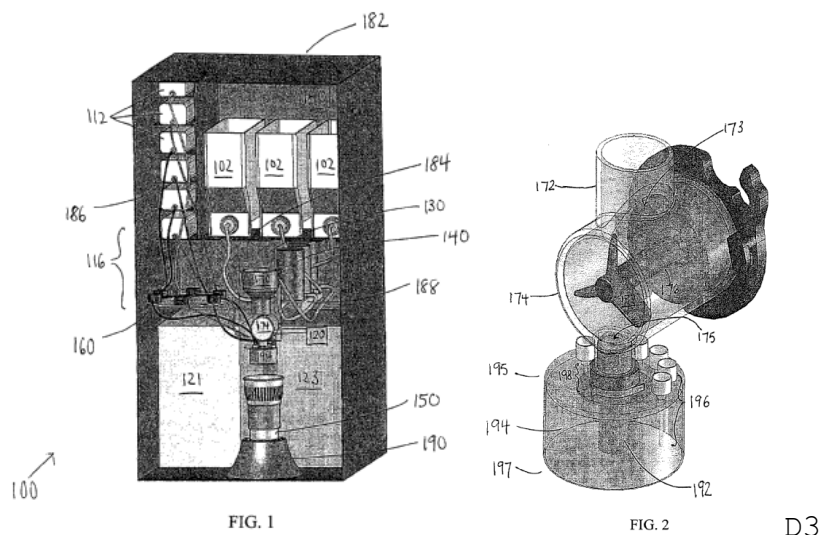
3.2 **Double patenting - G4/19**

Claim 1 of the present divisional application differs from claim 1 discussed in **T 871/14** in that a randomizing program performs the selection instead of only providing the randomized selection as an option in the user interface as claimed in the parent application. The present application therefore does not claim the same subject-matter as the parent application and the criteria for double patenting set out in **G 4/19** (cf. headnote) are not fulfilled.

3.3 Inventive step - Closest prior art

The Board agrees with the Appellant that D7 and D8 are unsuitable as closest prior art documents as they relate to psychological studies concerning human flavour conditioning. In line with the reasoning of **T 871/14**, reasons 2.1, the Board regards D3 as the closest prior art, a document which is referred to in **T871/14**, reasons 2.2.1. D7 and D8 are only relevant as far as disclosing unflavoured colorants and uncoloured flavourants are concerned.

3.4 D3



3.4.1 D3 discloses (page 7, line 3ff) a dispenser 100 including base storage chambers 102 that store beverage components and are in fluid communication with a base liquid dispensing mechanism. Additive containers 112 store additives and are in fluid communication with an additive dispensing mechanism 116. A blending mechanism 130, which comprises a base liquid dispensing nozzle 192 and additive nozzles 196, is provided in fluid communication with the dispensing mechanisms 106 and 116 and with a liquid source 120.

3.4.2 Dispenser 100 also includes a controller that is operatively connected to the dispensing mechanisms 116, the liquid source 120, and the blending mechanism 130. The containers 112 can store a variety of additives and flavourings, aromatics and colourants. The base-liquid dispensing mechanism is also associated with the liquid source 120, which provides a liquid that can be blended in blending mechanism 130 with one or more beverage components and/or one or more beverages to provide a base liquid. Liquid source 120 may be a source of potable water, carbonated water, cream, juice, or milk.

3.5 Distinguishing features

3.5.1 D3 therefore discloses (using the wording of claim 1, comments and reference signs with respect to D3) a method for providing a beverage having a ~~separately selected~~ colour (using a colorant as additive) from a post-mix beverage dispensing system (dispenser 100) comprising:

- (a.) providing ~~at least two~~ uncoloured beverage bases (water or carbonated water) for dispense from the post-mix beverage dispensing system (dispenser 100)
- (b.) separately storing (in additive container 112) at least two ~~unflavoured~~ colorants in the post-mix beverage dispensing system (there are six containers for additives, each additive may be a colorant);
- (c.) receiving a request ~~for a selected beverage base and the separately selected colour~~ with a computer processor (user interface for entering a mouse click or a keyboard/keypad entry, controller), ~~wherein the separately selected colour and/or beverage base is selected by an automated randomizing program;~~ and
- (d.) in response to the selection ~~of the selected beverage base and the separately selected colour,~~ automatically dispensing through a single dispensing

nozzle (base-liquid dispensing nozzle 192 and additive nozzles 196) the ~~selected~~ beverage base and at least one of the colorants to provide the beverage having the ~~separately selected~~ colour and a beverage flavour ~~independent from the separately selected colour, and vice versa.~~

- 3.5.2 The subject-matter of claim 1 differs from the method of document D3 in that
- (a) there are two uncoloured beverage bases separately stored (water and carbonated water are given in D3 as examples for the beverage base, but it is not disclosed that both are available simultaneously);
 - (b) the beverage base and colour can be selected separately;
 - (c) the colorant is unflavoured and the flavourant is uncoloured (the latter implicitly results from the second part of Feature (d.));
 - (d) the separately selected colour and/or beverage base is selected by an automated randomizing program.

3.6 Objective technical problem

Selecting different colours as such is not considered inventive. However - as shown in the following - feature (d) relates to selecting a colour and/or beverage base by an automated randomizing program. This randomizing component is considered to involve an inventive step. The effect of this features is to provide to the consumer an automatically selected colour/beverage base. This increases the number of available beverages in an automated manner wherein the consumer does not need to actively select the colour/beverage base. The objective technical problem is therefore to achieve this effect.

3.7 Non-obviousness

- 3.7.1 Claim 1 of the present divisional application differs from claim 1 discussed in **T 871/14** in that a randomizing program performs the selection instead of only providing the randomized selection as an option in the user interface as claimed in the parent application. As to the feature "using an automated randomizing program" however the same reasoning applies as discussed in **T 871/14**, reasons 2.4.4:
- 3.7.2 D4 provides only the teaching of obtaining various mixtures of given products (chocolate candies of various colours) being distinguished only by their colour. It would thus appear that the skilled person would not consider document D4 when attempting to solve the problem mentioned above.
- 3.7.3 Furthermore, the components of the "random MYSTERY" mixes in D4 are in fact selected according to well-defined, predetermined and programmed rules (e.g. selecting unpopular products). Hence, even though these predetermined rules are of course unknown to the customer, which justifies the term "MYSTERY", there is no random element in this selection. Even if the skilled person were to consider document D4 when attempting to solve the objective technical problem, they would therefore not be led to the claimed "automated randomizing program".
- 3.7.4 Furthermore, in the Board's view, common general knowledge would not lead the skilled person to the claimed invention, either.
- 3.7.5 Therefore, the subject-matter of claim 1 involves an inventive step. Independent device claim 7 corresponds

essentially to method claim 1. Claims 2 to 6 and 8 to 12 are dependent on claims 1 and 7, respectively.

- 3.7.6 Accordingly, the subject-matter of claims 1 to 12 involves an inventive step (Articles 52(1) and 56 EPC).

3.8 Conclusion

For the above reasons the board is of the opinion that the application and the invention to which it relates, in the version according to the Appellant's Main Request, meet the requirements of the EPC. Hence, a patent is to be granted on the basis of that request (Articles 97(1) and 111(1) EPC). Consideration of the appellant's Auxiliary Requests is therefore not necessary.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a patent as follows:

Claims: 1-12 as filed with letter dated 12 November 2020 (Main Request);

Description: pages 1-25 as filed with letter dated 4 December 2020;

Drawings: sheets 1/2-2/2 as originally filed.

The Registrar:

The Chairman:



B. Atienza Vivancos

G. Eliasson

Decision electronically authenticated