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**Datasheet for the decision  
of 23 April 2020**

**Case Number:** T 1002/17 - 3.2.04

**Application Number:** 08167234.7

**Publication Number:** 2140768

**IPC:** A23G9/30, B01F7/00, A23G9/12,  
A23G9/22

**Language of the proceedings:** EN

**Title of invention:**

A machine for producing and dispensing liquid or semi-liquid consumer food products

**Patent Proprietor:**

ALI GROUP S.r.l. - CARPIGIANI

**Opponent:**

S.P.M. Drink Systems S.p.A.

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a), 100(b), 100(c)

**Keyword:**

Grounds for opposition - lack of patentability (no) -  
insufficiency of disclosure (no) - added subject-matter (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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**Chambres de recours**

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**Case Number: T 1002/17 - 3.2.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 23 April 2020**

**Appellant:** ALI GROUP S.r.l. - CARPIGIANI  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
13 February 2017 concerning maintenance of the  
European Patent No. 2140768 in amended form.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** J. Wright  
C. Heath

## **Summary of Facts and Submissions**

I. Appeals were filed by the appellant (proprietor) and the opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1, the patent in suit (in the following, "the patent") met the requirements of the EPC.

II. With a letter of 24 November 2017, the opponent withdrew its appeal, leaving proprietor as sole appellant.

III. The opposition division decided that:

The subject-matter of claim 1 of the patent as granted though disclosed in a manner sufficiently clear and complete, and not amended to add subject-matter, was not novel. However, the subject-matter of the auxiliary request 1 did not add subject-matter and was novel and involved an inventive step over the cited prior art.

IV. The parties were summoned to oral proceedings. In a letter in preparation for the oral proceedings the Board set out its preliminary opinion on the relevant issues.

In a letter dated 9 April 2020, the respondent-opponent informed the Board that it would not attend oral proceedings scheduled for 18 May 2020.

The oral proceedings were subsequently cancelled.

- V. The appellant-proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted, in the alternative that it be maintained in accordance with auxiliary request 1 (as held allowable by the opposition division) or according to one of auxiliary requests 2 to 7, all filed with its grounds of appeal.
- VI. With its grounds of appeal, the opponent requested the patent be revoked. The opponent has since withdrawn its appeal and filed no more requests. Therefore, the respondent-opponent has no valid request on file.
- VII. The independent claim of the main request, patent as granted, reads as follows:

"An ice-cream machine for producing and dispensing ice cream or soft ice-cream products, comprising:

- a holding tank (2) for a liquid base product;
- a treatment circuit (10), comprising a cooling and mixing unit (19) for mixing said liquid base product and keeping to, or making said liquid base product to reach, a given temperature, so as to obtain ice cream or soft ice-cream products, said treatment circuit (10) comprising a whisking implement (12) provided with at least one stirrer (13),
- means (30) for dispensing said ice cream or soft ice-cream products;
- one or more actuators (40) acting on said base product, said ice cream, or soft ice-cream products and/or parts of said machine (1), characterised in that at least one of said one or more actuators (40) comprises a brushless motor (41) having a rotor (43) and acting on said stirrer (13) for driving the latter in rotation and in that the whisking implement (12) has the function of keeping the liquid

base product creamy also against a temperature reduction of the same liquid base product and the function of combining, during the rotation of the stirrer (13), the liquid base product with air, so that finished ice cream or soft ice-cream with creamy character is obtained, the brushless motor (41) being provided with an output shaft (44) integral with said rotor (43) and connected to the stirrer (13)".

VIII. In the present decision, reference is made to the following documents:

D1 : US2003/0080644 A1

D2 : US6163095 A

D3 : EP1787944 A1

D13: US6220047 B1

IX. The appellant-proprietor's arguments can be summarised as follows: The patent as granted meets all the requirements of the EPC.

X. The respondent-opponent has presented no substantive arguments in reply to the proprietor's appeal or the Board's communication.

### **Reasons for the Decision**

1. The appeal of the proprietor is admissible.

2. Background

The patent relates to a machine for producing and dispensing ice-cream or soft ice-cream products (see title and all versions of claim 1 and published patent specification, paragraph [0023]). The machine comprises

a stirrer with a whisking implement (see published patent specification, paragraphs [0029] and [0040] and all versions of claim 1) which is driven by a brushless motor (see published patent specification, paragraph [0041] to [0045]). Using a brushless motor (which is basically an electronically controlled motor) allows the whisking cycle to be optimised. This is because a brushless motor has a lower inertia and high dynamic response, thus allowing it to meet the required load more precisely (see published patent specification, paragraph [0052]).

3. In its communication dated 10 December 2019 the Board set out its preliminary opinion on the main request (as granted).

3.1 In particular the Board considered (in summary) that the opposition grounds under Articles 100(b) (sufficiency of disclosure) and 100(c) EPC (added subject matter) did not prejudice maintenance of the patent as granted. Moreover, that the subject matter of independent claim 1 of the main request (as granted) was new with respect to various cited documents.

Furthermore, regarding inventive step starting from various documents cited as starting documents the Board commented that it was not apparent why it would be obvious for the skilled person to arrive at the subject matter of granted claim 1.

3.2 The relevant parts (2 to 5) of the communication read as follows:

*2. Main request, opposition ground of added subject matter, Article 100 (c) EPC*

2.1 The opposition division found (see the impugned decision, section 2.3, in particular paragraph bridging pages 5 and 6) that claim 1 as granted did not add subject matter extending beyond the application as filed.

2.2 The respondent-opponent has argued in appeal, in respect of claim 1 as maintained by the opposition division (see their grounds of appeal, page 4/18) that the claim feature (in summary) motor output shaft integral with the rotor and connected to the stirrer adds subject matter extending beyond the application as filed. The issue appears to be the same for the main request (patent as granted).

2.3 The Board provisionally agrees with the opposition division that claiming the rotor is connected to the stirrer without saying the connection is a direct connection does not add subject matter. In the Board's view, it is evident from the application as filed that the motor output shaft must be connected (whether directly or indirectly) to the stirrer, otherwise it could not turn the stirrer. In the description (see paragraph [0044]), the direct connection of shaft and stirrer is presented as being optional (can be...). What ever the preceding punctuation in the original Italian text, there it is likewise presented as being optional "l'albero di uscita del motore brushless può essere direttamente collegato..." (emphasis added by the Board). It follows that the concept of a motor shaft connected (in whatever way) to the stirrer is not structurally and functionally linked to the idea of the motor having an output shaft that is substantially integral with the rotor. Therefore, there appears to be a direct and unambiguous disclosure in the application



as filed of an output shaft being connected with the stirrer as claimed.

2.4 With regard to the feature of a rotor as part of a brushless motor, acting on the stirrer the respondent-opponent (again in respect of the same feature in claim 1 as maintained) has argued that this is only originally disclosed with the motor having a stator and the rotor having one or more permanent magnets mounted on the stirrer (cf. original claim 5). The Board disagrees.

2.5 Claim 2 as originally filed disclosed a brushless motor acting on the stirrer, yet specifies neither a stator (which, in any case the Board considers an implicit feature of a brushless motor) nor that the rotor is provided with a permanent magnet mounted on the stirrer. Therefore, the above feature appears to have a basis in the combination of original claims 1 and 2.

2.6 Therefore, the Board is provisionally of the opinion that the opposition ground under Article 100(c) EPC (added subject matter) does not prejudice maintenance of the patent as granted.

3. Opposition ground under Article 100(b) EPC, sufficiency of disclosure

In appeal, the respondent-opponent has challenged sufficiency of disclosure of claim 1 as maintained (see its grounds of appeal, page 6/18, penultimate paragraph), in particular in relation to connecting a stirrer to a motor shaft where this is not a direct connection.

3.1 In the Board's view, the indirect connection of a rotational element to a shaft (for example by means of an intervening gear or cog mechanism) belongs to the skilled person's general knowledge. Therefore, the Board considers that this aspect of the patent is sufficiently disclosed.

3.2 Therefore, the Board provisionally agrees with the opposition division's positive finding on sufficiency of disclosure for the main request.

#### 4. Novelty

The appellant proprietor challenges the opposition division's finding (see impugned decision, section 2.4) that the subject matter of claim 1 lacks novelty with respect to D2. With the grounds of its (now withdrawn) appeal, the respondent-opponent challenged novelty of claim 1 as maintained with respect to D1 and a new document D13. These arguments must logically also apply to the broader granted claim 1.

4.1 Claim 1 of the main request (as granted), novelty with respect to D2

In the Board's view, the subject matter of claim 1 is new with respect to D2.

Regardless of whether or not the teaching of D2 is generally applicable to making ice cream as an example of a frozen food product mentioned in col.1, lines 10 to 20, in the Board's view, D2 does not appear to disclose a whisking implement provided with a stirrer having the function of combining, during rotation of the stirrer, a liquid based product with air.

*D2, see for example, column 1, lines 12 to 17 and 54 to 58, column 3, lines 41 to 44 with figure 2, discloses machines having a scraper implement. The driven scraper implement also has mixing rods 44 on a shaft 42 (see column 3, line 43 with figure 2). Whilst the Board considers that a mixing rod is a stirrer, the Board does not think that the rods 44 constitute a whisk functioning to combine liquid with air. Though whisks and scrapers may have stirrers they are still different implements, the one specifically designed to whisk the other to scrape.*

*Firstly D2 is silent as to any whisking function of the stirrer rods, let alone one that combines air and liquid.*

*Secondly, the way they are arranged appears to exclude this possibility. The stirrer rods 44 are located in the cylinder 12. As can best be seen in figure 1 (cf. column 3, lines 57 to 67) beverage is fed from a reservoir or mixing tank 90 into the top of the cylinder 12 via the inlet line 86. In the Board's view, with the tank 90 arranged above the cylinder 12, the latter can but be completely filled with beverage, rather than a mixture of beverage and air. Therefore, the mixing rods appear not to function to combine liquid based product with air as claimed.*

*4.2 For these reasons, the Board is of the opinion that the subject matter of claim 1 of the main request is new with respect to D2.*

*The same conclusion appears to apply to D1, which is a continuation in part of D2.*

*Late filed D13 shows a similar machine with scraping and stirring mechanism but no whisk. It therefore prima facie appears no more relevant than what is already on file.*

*4.4 From the above, the Board is of the preliminary opinion that the subject matter of claim 1 is new with respect to the prior art cited.*

*5. Main request, claim 1, inventive step*

*The opposition division did not decide the issue of inventive step for the main request (patent as granted) but only discussed inventive step for the version of the patent as maintained starting from D2 (see impugned decision, point 2.7). Nor has the respondent-opponent presented arguments against inventive step of granted claim 1 in reply to the proprietor's appeal. Only the appellant has commented on the issue, see section VII of the statement of grounds, addressing the various attacks presented in opposition.*

*Starting from D2 or D1 it is not apparent to the Board why the skilled person would, as a matter of obviousness, consider replacing the scraper/stirrer within its enclosed container, which appears to be a central feature of these documents' teaching, with a whisk.*

*D3, figures 4 and 5, is expressly concerned with making soft ice cream and to this end features a whipping and freezing unit. However, it is silent as to how the unit is driven. Absent any argument it is not apparent to the Board why or how the skilled person would simply adopt the brushless inductive motor arrangement of D1 or D2 which appear tailored to the specific scraping*

*arrangements disclosed there to arrive at the machine of granted claim 1."*

4. The Board notes that the respondent-opponent has not addressed the Board's provisional opinion with any substantive arguments. Absent any such further submissions the Board sees no reason to deviate from its provisional opinion.

In view of this, the Board finds that the invention is sufficiently disclosed, that the claims as granted do not contain added subject matter and that the subject matter of claim 1 is new.

Furthermore, since, as stated in the provisional opinion, it is not apparent to the Board why it would be obvious for the skilled person to arrive at the subject matter of claim 1 from the cited prior art, the Board can but find that the subject matter of claim 1 involves an inventive step.

5. From all of the above, the Board concludes that the grounds of opposition raised under Article 100(a), (b) and (c) EPC do not prejudice the maintenance of the patent as granted. Therefore, the appellant-proprietor's main request must be allowed.

**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 the patent as granted.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated