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**Datasheet for the decision
of 17 November 2022**

Case Number: T 0830/19 - 3.3.09

Application Number: 13716425.7

Publication Number: 2814328

IPC: A23F5/36, A47J31/36, B65D85/804

Language of the proceedings: EN

Title of invention:
SYSTEM FOR MAKING BEVERAGES

Patent Proprietor:
Caffitaly System S.P.A.

Opponents:
Terramark Markencreation GmbH
Parisi, Luigi

Headword:
System for making beverages/CAFFITALY

Relevant legal provisions:
EPC Art. 54
RPBA 2020 Art. 13(2)

Keyword:

Novelty - main request (no)

Amendment after summons - exceptional circumstances (no)

Mere reduction of the number of claim requests from 71 filed with the grounds of appeal to 11 filed two days before the oral proceedings (no)

Decisions cited:

T 1890/09, T 0217/10

Catchword:



Beschwerdekammern

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Case Number: T 0830/19 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 17 November 2022

Appellant: Caffitaly System S.P.A.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 17 January 2019
revoking European patent No. 2814328 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman A. Haderlein
Members: M. Ansorge
 N. Obrovski

Summary of Facts and Submissions

- I. The proprietor (appellant) lodged an appeal against the opposition division's decision revoking the European patent.
- II. With their notices of opposition, opponents 1 and 2 had requested that the patent be revoked, *inter alia*, on the ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC (lack of novelty).
- III. The opposition division decided, *inter alia*, that the subject-matter of claim 1 as granted lacked novelty over A6 (WO 2007/137974 A2).
- IV. Claim 1 as granted (main request) reads as follows (emphasis added by the board):

"A system for making beverages, comprising a capsule (2) containing at least one powdered food substance which can be extracted by passing pressurised water through it to make a beverage, the capsule (2) comprising a substantially cup-shaped body(3) having a central axis (4), the body (3) comprising a lower wall (5), a lateral wall (6) extending from the lower wall (5), and, at the opposite end of the lateral wall (6) to the lower wall (5), a perimetric edge (7) projecting outwards from the lateral wall (6), the capsule (2) also comprising a lid (8) associated with the perimetric edge (7) for closing the top of the body (3);

a capsule holder (9) forming a housing (10) inside it for accommodating the capsule (2), the capsule holder (9) comprising an infeed opening (11) through

which the capsule (2) can be inserted in the housing (10), the infeed opening (11) being delimited at its perimeter by an annular edge (12) of the capsule holder (9) at the top of which there is a projecting annular element (19) and/or respectively an annular seat (20),

injection means (14) mounted in the capsule holder (9) for in practice injecting pressurised water into the capsule (2) through the lower wall (5);

collecting means (15) for in practice collecting the beverage dispensed through the lid (8) of the capsule (2);

at the perimetric edge (7), on the opposite side to that where the lid (8) of the capsule (2) is associated, there being **an annular groove (21)** on whose surface there are three portions annularly arranged relative to the central axis (4), consisting of a bottom zone (23) and two inner lateral faces (24, 25) which are laterally positioned on opposite sides of the bottom zone (23), and/or respectively there being an annular tooth (22) on whose surface there are three portions annularly arranged relative to the central axis (4), consisting of a tip portion (29) and two outer lateral faces (30, 31) which are laterally positioned on opposite sides of the tip portion (29);

the capsule holder (9) and the capsule (2) being able to adopt a sealed configuration in which the annular edge (12) is in contact with the capsule (2) and is connected to it with a watertight seal;

in the sealed configuration the projecting annular element (19) being inserted in the annular groove (21)

and being in sealed contact with at least one of the inner lateral faces (24, 25), and/or respectively the annular seat (20) receiving inside it the annular tooth (22) and being in sealed contact with at least one of the outer lateral faces (30, 31)."

V. The parties' relevant arguments, submitted in writing and during the oral proceedings, are reflected in the reasons for the decision below.

VI. Requests

The appellant requested that the decision be set aside and that the patent be maintained as granted (main request) or on the basis of one of auxiliary requests 1 to 11, filed by letter of 15 November 2022.

Opponents 1 and 2 (respondents 1 and 2) requested that the appeal be dismissed.

Reasons for the Decision

MAIN REQUEST

1. Novelty over A6

1.1 Claim 1 relates to a system for making beverages comprising, *inter alia*, a capsule (2) and a capsule holder (9) (see point IV. above). The capsule holder (9) has a projecting annular element (19) or an annular seat (20), or both an annular element (19) and an annular seat (20), and the capsule (2) has an annular groove (21) or an annular tooth (22), or both an annular groove (21) and an annular tooth (22).

1.2 In the following, the alternative of claim 1 in which the capsule holder (9) has a projecting annular element (19) and the capsule (2) has an annular groove (21) (the "alternative in question") is assessed in relation to A6.

1.3 The appellant argued that the system according to claim 1 (concerning the alternative in question) was novel over A6. More precisely, the appellant emphasised that A6 did not disclose:

- (i) a capsule having an annular groove as required in claim 1 and
- (ii) the feature "in the sealed configuration the projecting annular element ... being inserted in the annular groove and being in sealed contact with at least one of the inner lateral faces..." (see the features indicated in bold under point IV. above)

1.4 For the following reasons, the claimed system is disclosed in A6.

1.4.1 A6 describes a device for producing a drink by extracting the same from a substance contained in a portion packaging, the portion packaging being insertable into the device, which comprises at least one holding-down device (2) and a counterpart (4) with a punching plate (5), the holding-down device (2) and/or the counterpart (4) being equipped with means for deforming the sealing element of the portion packaging, a depression (21) which is complementary to the sealing element being arranged in a lower region of the holding-down device (2), and/or in that a depression (41) which is complementary to the sealing element is arranged in the counterpart, the

depression(s) producing the sealing deformation of the portion packaging (see claim 19 of A6).

The portion packaging comprises a cavity for receiving a substance, a side wall (13) and an edge (14) which is integrally formed on this side wall (13) and protrudes outwards, the cavity (15) having an opening which is closable with a film (5), a deformable sealing element (3) being arranged on the portion packaging (see claim 1 of A6). The sealing element (3) may be arranged on the outer border of the protruding edge, and the sealing element (3) is preferably designed as a rollover edge (see claim 5 and Figures 1 to 3 of A6).

1.4.2 The appellant argued that A6 did not disclose a capsule having an annular groove on the opposite side to that where the lid of the capsule is associated.

1.4.3 The board does not agree.

1.4.4 Claim 1 specifies that the annular groove is at the perimetric edge, on the opposite side to that where the lid of the capsule is associated, and that it consists of a bottom zone and two inner lateral faces which are laterally positioned on opposite sides of the bottom zone.

1.4.5 In A6 (see in particular Figure 1 and the corresponding passages of the description), the area between the rollover edge seal (3) and the side wall (13) as shown in Figures 1 and 2 of A6 represents an annular groove within the meaning of claim 1. The area of the protruding edge (14) extending between the side wall (13) and the fourth region (34) of the rollover edge corresponds to the bottom zone, the end portion of the side wall (13) corresponds to one inner lateral face,

and the fourth region (34) corresponds to the other inner lateral face. There is no further limitation in claim 1 as far as the feature "annular groove" is concerned. In particular, claim 1 does not recite any dimensional limitations or exclude the possibility that a lateral face of the groove has a slit such that the inner volume of the groove is in fluid communication with a space adjacent to the groove (in this case: the inner volume of the rollover edge in A6).

Thus, an annular groove as required in claim 1 is disclosed by the capsule described in A6.

1.4.6 In this respect, the board is not convinced by the appellant's argument that the groove in A6 is not on the opposite side from where the lid of the capsule is associated. The fact that the perimetric edge is rolled over does not make the bottom zone in A6 "at the same side" as the side where the lid of the capsule is associated. Similarly, the fact that features disclosed in A6 have different names from those in claim 1 does not rule out unambiguous and direct disclosure. What matters is whether the features disclosed in A6 can, in a technically reasonable manner, be subsumed under the wording of claim 1 as interpreted by the board from the skilled person's perspective. With respect to the feature "annular groove (21)", this is indeed the case.

1.4.7 In addition, contrary to the appellant's opinion, the feature "in the sealed configuration the projecting annular element being inserted in the annular groove and being in sealed contact with at least one of the inner lateral faces" in claim 1 is also disclosed in A6.

1.4.8 As is clear from the embodiment shown in Figure 2 of A6 (the closed configuration shortly before the extraction operation), the rollover edge (3) is inserted in the sealing region (21) and a contact is formed due to the complementary shape of the rollover edge (3) and the surface of the sealing region (21). Figure 3 of A6 shows the configuration during the extraction operation. As is clear from Figure 3, the fourth region (34) of the rollover edge (3) has moved along the internal contour of the first region (31). This deformation of the rollover edge achieves fluid-tight contact between the holding-down device (2) and the counterpart (4) (see also page 10, lines 21 to 26 of A6). The projecting annular element (the protruding part of the holding-down device (2) directly adjacent to the sealing region (21)) is inserted in the annular groove (the area between the rollover edge seal (3) and the side wall (13)) and there is a contact with at least one of its inner lateral faces.

1.4.9 While the appellant confirmed that Figure 3 of A6 does show such a contact between the deformed rollover edge (3) and one surface of the sealing region (21), it contested that this contact led to a sealed contact in the sealed configuration as required in claim 1, arguing that a sealed contact would only be achieved through a mechanical outer element.

However, this interpretation of A6 as argued by the appellant does not take account of what the skilled person would directly and unambiguously derive from A6 (see page 9, lines 18 to 28, and in particular Figure 3).

The deformation of the rollover edge (3) leads to a sealed contact between the sealing region (21) and the

fourth region (34), so the feature of claim 1 relating to a sealed configuration and a sealed contact is directly and unambiguously disclosed in A6. As is also derivable from page 10, lines 24 to 26 of A6, the contact (created by the deformation) at least contributes to the fluid-tight contact achieved in A6. In this context, it is noted that the designation "sealing region (21)" used in A6 clarifies that sealing takes place in the sealing region (21) of the embodiment as shown in Figure 3.

- 1.4.10 Concerning the alternative referred to under point 1.2 above, the appellant did not invoke any alleged differences compared with A6 other than those indicated as (i) and (ii) under point 1.3 above. The board is not aware of any difference in relation to A6 either.

In view of the above, the subject-matter of claim 1 is not novel over A6.

AUXILIARY REQUESTS 1-11

2. Article 13(2) RPBA 2020

2.1 The appellant filed auxiliary requests 1 to 11 two days before the date of the oral proceedings before the board. In the appellant's view, these auxiliary requests should be admitted since they merely limited the total of 71 auxiliary requests filed with the grounds of appeal and no new auxiliary requests had been filed.

2.2 For the following reasons, auxiliary requests 1 to 11 were not taken into account in these appeal proceedings.

2.2.1 In the appellant's view, auxiliary requests 1 to 11 merely limited the number of auxiliary requests filed with the grounds of appeal. However, in addition to the number of auxiliary requests being limited, their order was amended too. This change in the order of the pending auxiliary requests represents an amendment to the appellant's appeal case, the admittance of which is subject to the board's discretion under Article 13(2) RPBA.

2.2.2 In the board's communication pursuant to Article 15(1) RPBA, the board gave reasons why the 71 auxiliary requests filed with the grounds of appeal could not be admitted into the proceedings (see point 7 of the communication).

2.2.3 The reasons why the board came to this conclusion are briefly summarised as follows.

Firstly, although the appellant's 71 auxiliary requests were submitted for the first time in the appeal proceedings, they were not spelled out or attached as annexes. Instead, the appellant provided instructions on how to combine one of multiple options for the first independent claim, one of multiple options for the second independent claim and one of multiple options for the dependent claims in order to arrive at a specific set of claims for each auxiliary request. Accordingly, the board and the other parties have to actively determine the content of any given auxiliary request themselves. This not only requires a considerable amount of time, but there is also the risk that in doing so the board or one of the parties makes a mistake. Hence, this way of presenting auxiliary claim requests does not comply with a party's obligation to set out its requests in a clear manner.

Secondly, the appellant did not explain why these auxiliary requests might be suitable to overcome the objections raised (see point "OTHER AUXILIARY REQUESTS" on page 18 of the grounds of appeal: "At present no discussion of novelty and inventive step of auxiliary requests is considered necessary"). This is not in line with the appellant's obligation to present its complete case in the statement of grounds of appeal and to set out clearly and concisely the reasons why the impugned decision should be amended. For want of any such justification, the auxiliary requests have not been substantiated (see T 1890/09, Reasons 4.4 and T 217/10, Reasons 5.4). The board further notes that, in its reply to the grounds of appeal, respondent 1 provided detailed arguments as to why the auxiliary requests did not meet the requirements of the EPC (Articles 54, 56, 84 and 123(2) EPC); these have not been rebutted by the appellant either.

2.2.4 The above reasoning given in the board's communication equally applies to auxiliary requests 1 to 11. In this context, it is noted that auxiliary requests 1 to 11 as filed two days before the date of the oral proceedings were likewise not accompanied by any substantiation as to why the claimed subject-matter might be suitable to overcome the objections raised by the respondents, in particular as to why the claimed subject-matter might be suitable to overcome the novelty objections raised. Moreover, it is not self-explanatory why the amendments made in auxiliary requests 1 to 11 might be suitable to overcome the objections raised.

2.2.5 The appellant further alleged that, in view of the opposition division's previous written preliminary opinion, it had been surprised at the oral proceedings

before the opposition division that the division had considered the subject-matter of claim 1 not novel over A6. However, even if this were indeed the case, the appellant did not provide any cogent reasons why auxiliary requests 1 to 11 were only submitted two days before the oral proceedings before the board instead of at an earlier point in time.

For the reasons given above, there are no exceptional circumstances within the meaning of Article 13(2) RPBA which could justify admitting auxiliary requests 1 to 11. Thus, auxiliary requests 1 to 11 were not taken into account in the appeal proceedings (Article 13(2) RPBA).

3. In conclusion, there is no allowable claim request on file.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



M. Schalow

A. Haderlein

Decision electronically authenticated