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**Datasheet for the decision  
of 27 March 2023**

**Case Number:** T 0557/21 - 3.2.07

**Application Number:** 14815375.2

**Publication Number:** 3087025

**IPC:** B67D1/00, B67D1/08

**Language of the proceedings:** EN

**Title of invention:**

BEVERAGE DISPENSING DEVICE FOR DISPENSING DIFFERENT TYPES OF  
BEVERAGES OR BEVERAGE COMPONENTS

**Patent Proprietor:**

Anheuser-Busch InBev S.A.

**Opponent:**

Heineken Supply Chain B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a), 100(b), 100(c), 54, 56  
RPBA 2020 Art. 12(3), 12(5), 12(6), 13(2), 15(1)

**Keyword:**

Novelty - (yes)

Inventive step - (yes)

Grounds for opposition - fresh ground for opposition (yes)

Discretion not to admit submission - requirements of Art.

12(3) RPBA 2020 met (no)

Late-filed objection - should have been submitted in first-  
instance proceedings (yes) - admitted (no)

Amendment after summons - exceptional circumstances (no)

**Decisions cited:**

G 0010/91

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0557/21 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 27 March 2023**

**Appellant:** Heineken Supply Chain B.V.  
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**Respondent:** Anheuser-Busch InBev S.A.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 March 2021  
rejecting the opposition filed against European  
patent No. 3087025 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** S. Watson  
A. Pieracci

## **Summary of Facts and Submissions**

- I. An appeal was filed by the opponent in the prescribed form and within the prescribed time limit against the decision of the opposition division rejecting the opposition filed against European patent No. 3 087 025.
- II. The opposition division found that the grounds of opposition raised by the opponent, namely lack of novelty and lack of inventive step of the subject-matter of claim 1 (Article 100(a) EPC), did not prejudice the maintenance of the patent as granted.
- III. In preparation for oral proceedings, the Board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA 2020 of 20 September 2022, to which the opponent replied on the merits with its submissions of 20 March 2023.
- IV. Oral proceedings before the Board took place on 27 March 2023. At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.
- V. The following documents are mentioned in this decision:
- 01: GB 2479483 A;
  - 02: EP 1 669 322 A1;
  - 03: US 2011/0017776 A1;
  - 05: WO 02/26614 A2;
  - 06: US 7,279,190 B1;
  - 07: US 2013/0056493 A1;
  - 08: US 5,803,320 A.

VI. The final requests of the parties are as follows:

The opponent (appellant) requested that

- the decision under appeal be set aside; and
- the patent be revoked.

The patent proprietor (respondent) requested that

- the appeal be dismissed.

VII. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

VIII. Independent claim 1 of the patent as granted reads as follows (feature labelling as used in the decision under appeal):

- i. A beverage dispensing device (1) for dispensing different types of beverages or beverage components (4,6,8), at least one of which being a malt based beverage or beverage component, wherein the device comprises at least:
  - ii. multiple supply sources (2) each containing a beverage or a liquid (4), a gaseous (8) or a solid beverage component (6);
  - iii. an output line (13) of the beverage dispensing device (1) through which a beverage (24) dispensed by the device (1) is supplied to a receptacle (14);
  - iv. dispensing means (15) for opening and closing the output line (13) and comprising a dispensing valve (16) which is operated by operating means (17) for opening the dispensing valve (16) in order to supply a beverage (24);
  - v. multiple supply lines (9), each supply line (9) extending from a corresponding supply source

- (2) and comprising a controllable supply line valve (10) which can be set in an open and closed position; and,
- vi. a controlling means (19) for sequentially setting the controllable supply line valves (10), wherein in each sequence step the controllable supply line valves (10) are set into a closed or open position according to a pre-determined setting, a beverage (24) containing multiple beverages or beverage components (4,6,8) being dispensed into the receptacle (14) after every sequence step has been executed and this during a single tapping cycle, characterized in that
  - vii. the device comprises connecting means (18) formed as a chamber and connected at the one hand to every supply line (9) and at the other hand to the output line (13).

### **Reasons for the Decision**

- 1. *Novelty - Articles 100(a) and 54 EPC - claim 1 as granted - document 05*
- 1.1 The opposition division found that the subject-matter of claim 1 was novel with respect to the disclosure of document 05 as, inter alia, feature iv was not disclosed in document 05 (see decision under appeal, II.12.1.3).
- 1.2 Feature iv of claim 1 as granted reads as follows:  
  

*"dispensing means (15) for opening and closing the output line (13) and comprising a dispensing valve (16) which is operated by operating means (17) for*

*opening the dispensing valve (16) in order to supply a beverage (24)".*

According to the appellant, feature iv did not specify that the claimed system had physical means inside the output line for opening and closing said line. Feature iv only required that the device had dispensing means for opening and closing the output line and having at least a dispensing valve operated by operating means for opening the dispensing valve to supply a beverage. The dispensing valve therefore did not have to be positioned in the output line itself. Thus, although the spigot of document O5 was not a conventional valve but rather operated by automatically opening and closing various flow control valves (O5, paragraph [0056]), the flow control valves were dispensing means "suitable for opening and closing the output line" (statement of grounds of appeal, III.1.1.2).

The appellant reiterated this argument in its submissions of 20 March 2023 (page 3, lines 20 to 26) and at oral proceedings before the Board. According to the appellant, a feature must be given its broadest reasonable interpretation and claim 1 did not specify that the dispensing valve (16) was in the output line. Further, it was not necessary for the invention claimed in the contested patent that the dispensing valve was in the output line. In document O5, the flow control valves allowed or prevented the flow of beverages through the output line and therefore functionally feature iv was known from O5.

1.3 The Board cannot agree and generally follows the reasoning in the decision under appeal (decision under appeal, page 6, second paragraph) and the arguments of the respondent (reply to the statement of grounds of

appeal, page 3) that the claim requires that the dispensing means open and close the output line and the dispensing means must comprise a dispensing valve, irrespective of any particular method of use of the device.

The output line is defined in the claim as the line "through which a beverage dispensed by the device is supplied to a receptacle" (feature iii.). The output line is further defined as being connected to the connecting means formed as a chamber (feature vii), whereby every supply line is also connected to the chamber. Therefore the output line has to be considered as the line which runs from the connecting means to the receptacle. It is this line which must be opened and closed by the dispensing means comprising a dispensing valve.

In document 05 the mixing chamber 316, nozzle chamber 318 and nozzle 152 remain permanently open, the flow control valves upstream of the mixing chamber assembly open and close the supply lines not the output line.

There is therefore no unambiguous disclosure in document 05 of any dispensing means for opening and closing the output line so that feature iv of the subject-matter of claim 1 as granted is not disclosed in document 05.

- 1.4 As feature iv is not disclosed in the device of document 05 it is unnecessary to consider which further features of the claim are disclosed in document 05.



2. *Novelty - Articles 100(a) and 54 EPC - claim 1 as granted - document O6*

2.1 In the decision under appeal the opposition division found that the device of document O6 did not disclose at least feature vii of claim 1 of the patent as granted (decision under appeal, II.12.2). The opposition division reasoned that the "supply line", outlet 26, from the "supply source", brew basket 24, was not connected to the mixing chamber 28 as column 6, lines 22 to 26 of document O6 merely indicated that the tea extract passed out of the brew basket 24 through an outlet 26 at the bottom of the brew basket and into a removable mixing chamber 28, which also preferably functioned as an insulated mobile serving urn. As document O6 was silent regarding any connection between the brew basket outlet and the removable mixing chamber, the device of O6 did not unambiguously disclose that every supply line was connected to connecting means formed as a chamber, as required by feature vii of claim 1 as granted.

2.1.1 The appellant argued that the decision was incorrect as the opposition division had interpreted feature vii too narrowly, no direct physical coupling between the supply lines and the chamber was required (see statement of grounds of appeal, III.1.2.7). In addition the outlet 26 alone of the brew basket did not form the supply line, instead the "whole fluid line extending from the hot water supply source to the mixing chamber can be considered a supply line" (see statement of grounds of appeal, III.1.2.6).

2.1.2 The Board however agrees with the opposition division and the respondent (reply to the appeal, page 7) that the skilled person in the field of the claimed

invention would understand feature vii as requiring a physical connection between every supply line and the connecting means, not only a functional fluid communication.

- 2.1.3 In addition, feature v of claim 1 as granted requires that each supply line extends from a corresponding supply source and comprises a controllable supply line valve which can be set in an open and closed position.
- 2.1.4 In its submissions of 20 March 2023 the appellant argued that the brew valve 46 was the controllable supply valve for the beverage component of tea (submissions of 20 March 2023, page 13, lines 8 to 15).
- 2.1.5 This argument cannot be followed as brew valve 46 opens and closes the supply line either between the cold water source 30 and the hot water 14 (brew valve 46) or between the hot water tank 14 and the spray head 22 (brew valve in position 46'). It does not open and close the supply line 26 between the brew basket 24 and the mixing chamber 28.

The skilled person, would not regard the spray head and a brew basket where an additional component is added as all forming part of one supply line extending from a corresponding supply source.

As reasoned by the opposition division the brew basket would be understood by the skilled person as a supply source as that is where the brewed hot liquid tea extract is supplied from (see decision under appeal, II.12.2.2).

Therefore the outlet 26 has to be seen as a supply line extending from a corresponding supply source, however

this supply line has no valve as required by feature v of claim 1 as granted and it is not unambiguously disclosed that it is connected to the mixing chamber as required by feature vii.

- 2.1.6 Therefore the Board agrees with the reasoning in the decision under appeal (points II.12.2.2) that as the brew basket does not have a supply line, as defined in feature v, which is connected to the connecting means, feature vii is not disclosed in document O6.
3. *Novelty - Articles 100(a) and 54 EPC - claim 1 as granted - document O1*
  - 3.1.1 In the decision under appeal the opposition division found that the device of document O1 did not disclose feature vii or part of feature vi, in particular as it was not specified in O1 how the beverages were delivered to the outlet for dispensing. The opposition division reasoned that in the device of document O1 separate supply lines extended from each of the control valves to respective dispense valves (O1, page 7, lines 10 to 12 and page 5, lines 18 to 22) so that there was no unambiguous disclosure of connecting means according to feature vii. of claim 1 as granted (see decision under appeal, point II.12.3).
  - 3.1.2 The appellant argues that the opposition division incorrectly interpreted feature vi. and that document O2, which is directly referred to on page 7 of document O1 and forms part of the disclosure of O1, disclosed feature vii (see statement of grounds of appeal, point III.1.3).

- 3.1.3 The Board cannot follow the arguments of the appellant and does not see an unambiguous disclosure of at least feature vii in document O1.
- 3.1.4 In point III.1.3.6 of its statement of grounds of appeal, the appellant submits that the device disclosed in document O1 specifically incorporates a dispense tap, according to the disclosure of document O2, and that this tap discloses a nozzle having passageways 61, 62 which merge into an output line running to outlet 64 (O2, paragraph [0047]), whereby the space where the two passageways merge into a single passage way can be regarded as the connecting means of feature vii.
- 3.1.5 The Board does not agree that feature vii is unambiguously disclosed in document O1, even taking the disclosure of document O2 into account.

Even if the skilled person were to regard an embodiment of document O2 with a single dispense outlet as forming part of the content of document O1, feature vii is not disclosed.

The appellant argues that the merging of the two supply lines into a single output line (document O2, figure 4) implicitly creates "connecting means" formed as a chamber.

However, there are no connecting means in the tap of document O2 as the supply lines merge directly into the output line so that there is no need to connect them. In addition, the output passageway 63 cannot be an output line as defined in claim 1 of the patent as granted as no means for opening and closing the output line are shown, as required by feature iv (see point 1.3 above in relation to document O5).

3.1.6 As the Board is of the view that feature vii is not disclosed in the device of document 01 it is unnecessary to consider whether or not feature vi is disclosed.

4. The appellant has thus not convincingly demonstrated that the opposition decision was incorrect in finding that the subject-matter of claim 1 of the patent as granted was novel with respect to the disclosure of any of documents 05, 06 or 01.

5. *Inventive step - Articles 100(a) and 56 EPC - claim 1 as granted - combination of teaching of document 01 with document 05*

In the decision under appeal the opposition division reasoned that although the mixing chamber 316 shown in figure 4 of document 05 could be understood as connecting means formed as a chamber according to feature vii, the skilled person would not integrate this mixing chamber in the device of document 01 without performing inventive constructional changes (see point II.13.2.2, decision under appeal).

5.1.1 The appellant argued that the decision was incorrect as the skilled person would only take from document 05 the teaching that a mixing chamber connected to every supply line and to the output line solves the technical problem of "how to provide dispensing of beverages or beverage components in mixed form with the device of 01" (see statement of grounds of appeal, points IV.1.1.1 and IV.1.1.2).

5.1.2 The Board, however, agrees with the opposition division and the respondent that it is not obvious to combine the teachings of documents 01 and 05.

As argued by the respondent (reply to the statement of grounds of appeal, page 13, first paragraph) only by cherry-picking isolated features from the prior art is it possible to modify the device of document O1 to arrive at the claimed subject-matter.

5.1.3 The appellant argues that the skilled person would be "taught by O5 of a mixing chamber inside the dispensing device being connected to every supply line and output line that this solves the problem of mixing of the beverages or beverage components of O1 before dispensing irrespective of any details of the mixing chamber" (see statement of grounds of appeal, page 18, final paragraph). However, the appellant has not shown why the skilled person would isolate and combine only one feature of the mixing chamber assembly 122 of the device of O5 in the device known from document O1 in order to solve the objective technical problem posed by the appellant.

5.1.4 In addition, the integration of the mixing chamber assembly 122 of document O5 in the beverage dispensing device of document O1 would not lead to a device having all the features of claim 1 as granted. Document O5 teaches the use of a dispensing device which does not have a conventional valve but functions by opening and closing various flow control valves in the supply lines. As discussed above (point 1.3), in line with the decision under appeal, the Board does not view document O5 as disclosing dispensing means for opening and closing the output line, as the output line must be the line downstream of the connecting chamber through which a beverage is dispensed to a receptacle (features ii, iii and vii of claim 1 as granted). Therefore, if the teaching of document O5 of the mixing chamber assembly

122, were to be incorporated into the device of document O1, there would be no dispensing means for opening and closing the output line.

The appellant has therefore not convincingly shown that the subject-matter of claim 1 as granted is obvious over a combination of the teaching of documents O1 and O5.

6. *Inventive step - admittance of further objections*

With its statement of grounds of appeal and its submissions of 20 March 2023, the appellant raised a number of further inventive step objections.

6.1 Combination of O1 as the closest prior art with the teaching of O2

6.1.1 The objection to lack of inventive step of claim 1 compared with the combination of the teaching of documents O1 and O2 does not form part of the decision under appeal. According to Article 12(6), second sentence, RPBA 2020, the Board shall not admit objections which should have been submitted in opposition proceedings unless the circumstances of the appeal case justify their admittance.

6.1.2 The appellant argues that the reference to document O2 in document O1 was not discussed in the decision under appeal, although it was submitted by the appellant in its notice of opposition (statement of grounds of appeal, page 16, lines 20 to 22).

6.1.3 The Board notes that document O2 was mentioned in the notice of opposition only with respect to novelty of

the subject-matter of claim 1 (notice of opposition, paragraph bridging pages 15 and 16).

Thus the Board cannot agree that the objection of lack of inventive step with respect to the combination of documents O1 and O2 was raised during the opposition proceedings. The Board cannot see any circumstances in the present case justifying the admittance of this objection, in particular as the appellant has not submitted any and the claims remain as granted.

6.1.4 Therefore, the objection of lack of inventive step of claim 1 of the patent as granted with respect to the combination of teachings of documents O1 and O2 was not admitted into the appeal proceedings (Article 12(6), second sentence, RPBA 2020).

6.2 Combination of O1 as the closest prior art with the teaching of O3, O6, O7 or O8

6.2.1 In its statement of grounds of appeal, although the appellant formally raised an objection of lack of inventive step of the subject-matter of claim 1 of the patent as granted with respect to the combinations of the teaching of O1 together with O3, O6, O7 or O8, these objections were not reasoned (statement of grounds of appeal, page 15, line 25 to page 16, line 2).

6.2.2 According to Article 12(3) RPBA 2020 the statement of grounds of appeal shall contain a party's complete appeal case. Article 12(5) RPBA 2020 gives the Board discretion not to admit parts of submissions which do not meet the requirements of Article 12(3) RPBA 2020.



6.2.3 The appellant did not substantiate its lines of attack relating to the combination of O1 with O3 or O6 to O8, in particular the appellant did not provide any arguments relating to the opposition division's reasoning in point II.13.2.1 of the decision under appeal. In this section of the decision the opposition division found that the skilled person would not have applied the teaching of documents O3, O6, O7 or O8 to the device of document O1 because none of the documents provided any motivation to combine their mixing devices in a tap or tap column as disclosed in O1 and the mixing devices "have large dimensions, that make them unsuitable for integration in a tap or tapping column".

6.2.4 In the absence of any argumentation the Board is not in a position to decide whether the appellant has convincingly demonstrated that the decision under appeal is incorrect.

Therefore, the unsubstantiated objections of a lack of inventive step of the subject-matter of claim 1 of the patent as granted with respect to the combination of the teaching of O1 with O3, O6, O7 or O8 were not admitted into the appeal proceedings (Article 12(5) RPBA 2020).

6.3 Combination of O5 as the closest prior art with the common general knowledge of the skilled person

6.3.1 With its submissions of 20 March 2023, the appellant raised the objection for the first time in the appeal proceedings that the subject-matter of claim 1 as granted was obvious compared with the teaching of document O5 together with the common general knowledge of the skilled person (see submissions of 20 March 2023, page 8, line 20 to page 9, line 16).

6.3.2 At the oral proceedings before the Board, the respondent requested that the new objection not be admitted into the appeal proceedings as the objection was raised for the first time after the summons to oral proceedings had been issued and no exceptional circumstances were present (Article 13(2) RPBA 2020).

6.3.3 The appellant argued during the oral proceedings before the Board that the objection had already been explicitly and/or implicitly raised. The objection formed part of the decision under appeal (point II. 13.3) and the respondent had mentioned the objection in its reply to the appeal (page 14), so that the objection could be considered to explicitly form part of the appeal proceedings. In addition, as lack of novelty of claim 1 with respect to document O5 had been raised, an inventive step objection starting from this document was implicitly raised. The appellant further argued at the oral proceedings before the Board that even if the objection was not regarded as already explicitly or implicitly present in the appeal proceedings, the Board should use its discretion and consider the objection.

6.3.4 As confirmed by the appellant at the oral proceedings before the Board, the objection to a lack of inventive step of the subject-matter of claim 1 with respect to the combination of teaching of document O5 and the common general knowledge of the skilled person was not raised by the appellant in its statement of grounds of appeal.

Therefore, this objection did not form part of the appellant's appeal case. That the respondent had confirmed, in its reply to the appeal, that it agreed

with further findings of the opposition division, not relied upon by the appellant, did not introduce the objection into the appeal proceedings.

Pursuant to Article 12(3) RPBA 2020 an appellant's statement of grounds of appeal must contain its complete appeal case. The statement of grounds of appeal should clearly and completely set out why it is requested that the decision under appeal should be reversed and should specify expressly all the objections relied on.

Thus, even if the respondent mentioned objections found in the decision under appeal, but not in the appellant's statement of grounds these objections were not part of the appellant's appeal case as the appellant did not set out why the decision under appeal should be reversed on this point.

In addition, a novelty objection to document O5 cannot be seen as an implicit inventive step objection starting from document O5. The requirements of Article 12(3) RPBA 2020 require the appellant's complete case to be set out in the statement of grounds of appeal and all objections relied on to be expressly specified.

According to Article 13(2) RPBA 2020 any amendment to a party's appeal case made after the summons to oral proceedings has been issued shall, in principle, not be taken into account unless there are exceptional circumstances, justified with cogent reasons by the party concerned.

The appellant did not indicate that any exceptional circumstances were present and the Board cannot see any.

Therefore, as the objection was filed just one week before oral proceedings before the Board, and thus after the summons to oral proceedings had been issued, it is an amendment to the appellant's appeal case. In the absence of any exceptional circumstances justified by cogent reasons, the objection was not admitted into the appeal proceedings (Article 13(2) RPBA 2020).

7. *Further grounds for opposition - admittance*

The appellant raised fresh grounds for opposition with its submissions of 20 March 2023 (Article 100(b) EPC) and during the oral proceedings before the Board (Article 100(c) EPC).

According to G 10/91 (Headnote 3.), fresh grounds for opposition may be considered in appeal proceedings only with the approval of the patent proprietor. If consent is not given, the decision may not be dealt with in substance at all (G 10/91, Reasons 18.).

In the present case, the respondent did not give its approval to consider the fresh grounds for opposition, therefore these objections are not considered in this decision (see also Case Law of the Boards of Appeal, 10th edition, 2022, V.A.3.2.3 h)).

8. *Conclusions*

The appellant did not convincingly demonstrate that the opposition division's findings relating to novelty of the subject-matter of claim 1 as granted with respect to the disclosures of documents 05, 06 and 01 was incorrect. Further, the appellant did not convincingly demonstrate that the opposition division's findings

relating to inventive step of the subject-matter of claim 1 as granted with respect to the combination of the teaching of documents O1 and O5 were incorrect. None of the appellant's further objections were admitted into the appeal proceedings.

**Order**

**For these reasons it is decided that:**

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated