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**Datasheet for the decision  
of 5 September 2024**

**Case Number:** T 0718/23 - 3.2.07

**Application Number:** 06824489.6

**Publication Number:** 1954624

**IPC:** B67D1/08, B65D81/26, B65D47/24,  
B65D1/02, B29C49/06

**Language of the proceedings:** EN

**Title of invention:**  
SYSTEM AND METHOD FOR DISTRIBUTION AND DISPENSING OF BEVERAGES

**Patent Proprietor:**  
Petainer Lidköping AB

**Opponents:**  
Perani & Partners S.p.A.  
Dispack-Projects N.V.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
Inventive step - (no)

**Decisions cited:**

T 2951/18

**Catchword:**



**Beschwerdekammern**  
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**Chambres de recours**

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Case Number: T 0718/23 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 5 September 2024**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
22 February 2023 concerning maintenance of the  
European Patent No. 1954624 in amended form.**

**Composition of the Board:**

**Chairwoman**            S. Watson  
**Members:**            V. Bevilacqua  
                             S. Ruhwinkel

## **Summary of Facts and Submissions**

- I. The present appeal is from the decision of the opposition division concerning the maintenance in amended form of the European patent No. 1 954 624, on the basis of the second auxiliary request filed in the course of earlier appeal proceedings (see decision T 2951/18).
  
- II. Both opponents (appellants) filed an appeal, requesting  
  
that the decision under appeal be set aside and  
that the patent be revoked.  
  
The patent proprietor (respondent) requested  
  
that the appeal be dismissed,  
or in the alternative,  
when setting aside the decision under appeal,  
that the patent be maintained in amended form on  
the basis of one of auxiliary requests 3 to 6 also  
filed during the earlier appeal proceedings.
  
- III. In preparation for oral proceedings, the board gave, in a communication pursuant to Article 15(1) RPBA 2020, its preliminary opinion, according to which the patent in suit was to be revoked.
  
- IV. No party responded substantively to the board's communication.
  
- V. Oral proceedings before the board took place on 5 September 2024.  
During oral proceedings the respondent withdrew its auxiliary requests 3 to 6.

At the conclusion of the proceedings the decision was announced.

The final requests of the parties are therefore as follows:

for the appellants:

that the decision under appeal be set aside and that the patent be revoked.

for the respondent

that the appeal be dismissed.

Further details of the oral proceedings can be found in the minutes.

VI. The following evidence, cited in the appealed decision, will be referred to in the present decision:

- O1: EP 1 468 930 A1
- O2: US 6 841 262
- O3: US 4 665 940
- O9: US 5 913 438
- O18: US 5 353 954
- O19: CA 1 222 211
- O21: Johnson Enterprises, Inc. brochure  
"the beer sphere system"
- O24: You Shi Hu et al., "Improving gas barrier of PET by blending with aromatic polyamides", Polymer 46 (2005) 2685-2698
- S1: Declaration of Mr. Terence W. Staed, dated 1 December 2020, with the following annexes:
- S1/B1: Brewers Digest, "West End's Beer Ball", January 1979

- S1/B2: Packaging Digest, "Oly rolls out PE barrel", December 1980
- S1/B3: PACKAGE ENGINEERING, "F.X. Matt ups sales 'sphere' by blow molding beerballs", December 1982
- S1/B4: Don Cazentre, "Remember the beerball? It was once the life of every party"
- S1/B5: Cincinnati Milacron Specification Sheet PM-199, "Plastic Container Blow Molding Machine Model RHB-IX"
- S1/B6: Cincinnati Milacron Specification Sheet PM-199 (11/82), "Plastic Container Blow Molding Machine Model RHB-IX"
- S1/B7: same document as O21
- S1/B8: same document as O19
- S1/B9: Beverage World Periscope Edition, "Wine CoolerBall Rolls across Country"; August 1987
- S1/B10: <https://theforemostauthority.wordpress.com/2015/02/17/what-ever-happened-to-the-beer-ball/>
- S1/B11: Compilation of promotional videos
- S1/B12: Photographs "Johnson Enterprises 20 liter Beer Ball" and "Johnson Enterprises 20 liter (300 grams PET sphere with concave base)"
- S1/B13a: "Economic, accurate filling", Metal Box beer spheres, Metal Box Beverage Packaging
- S1/B13b: "Metal Box Beer Spheres. They're taking brewers into new spheres." Metal Box Beverage Packaging
- S1/B14: Technical drawing "PREFORM BEER SPHERE - 30 L"
- S1/B15: Photographs of a Metal Box Beer Spheres exhibition stand
- S1/C1: Technical drawing "5.16 GALLON BEER SPHERE"
- S1/C2: Technical drawing "3.875 GALLON BEER CONTAINER"
- S1/C3a: Technical drawing "DRAFT BALL CLOSURE"

ASSEMBLY"

- S1/C3b: Letter to H. Craig signed by A. J. Begany and T. W. Staed, 25 April 1990
- S1/C4: Specification sheet "5.16 GALLON DRAFT BALL"
- S1/C5: Photographs "Anheuser-Busch Bud Light Beer Ball"
- S2: Declaration of Mr Geoffrey Alan Giles, dated 17 December 2020, with annexes:
  - S2/A1: same document as S1/B13a
  - S2/A2: same document as S1/B13b
  - S2/A3: same document as S1/B15
  - S2/A4: same document as S1/B14
  - S2/A5: Technical drawing "BEER SPHERE: 20 LITRE"
- S3: Extract from International Beverage News, May 1987
- S4: Extract from Packaging Week, "Ideas and optimism at Brew 87", June 1987
- S5: Extract from Liquids Handling, "Making beer go round", January 1987
- S6: Extract from Geoff A. Giles, "Handbook of Beverage Packaging", ISBN 1-85075-989-8 (1999)
- S7: Technical drawing "30 LITRE BEER SPHERE"
- S8: First declaration of Mr Albert Wauters, dated 5 February 2021, with annexes:
  - S8/A2: same document as O21
  - S8/A3: same document as O19
  - S8/A4: same document as S2/A5
  - S8/A5: same document as S7
- S9: Second declaration of Mr Albert Wauters, dated 12 October 2022.

The following documents, submitted with the statements of grounds of appeal, will also be referred to:

- S10: Third declaration of Mr Albert Wauters, dated 23 June 2023



O38: US 6 112 924 A  
O39: US 4 780 257 A  
O40: WO 2011/124626 A2.

VII. Independent claim 1 of the **second auxiliary request**, which was considered by the opposition division as being in compliance with the requirements of the EPC, reads as follows (the feature numbering used in the appealed decision, see point VIII of the facts and submissions and point 10.1 of the Reasons, has been added by the Board):

- 1.1 "A system for distribution and dispensing of beverages,
- 1.2.1 comprising: a container (100) for beverage,
- 1.2.2 said container (100) having a mouth portion (108), a shoulder portion (110), a base portion (114) and an essentially cylindrical body portion (112) extending between the shoulder portion (110) and the base portion (114),
- 1.2.3 formed in one piece,
- 1.2.4 collapsible and
- 1.2.5 disposable; and
- 1.3.1 a tube structure (104) comprising
- 1.3.2 an elongate tube (136) to be inserted in the container (100) and having
- 1.3.3 an inner conduit (137) for beverage,
- 1.4.1 and a closure element (102)
- 1.4.2 to be connected to the mouth portion (108) of the container (100),
- 1.5 wherein - in use - an inner end (136b) of the tube (136) is located adjacent to the base portion (114) of the container (100) for passing beverage from said inner end (136b), through said conduit (137) and to the closure element (102) for dispensing,
- 1.6.1 said container (100) is blow-moulded
- 1.6.2 from a PET preform,

- 1.6.3 has a capacity of 15-40 litres, and
- 1.6.4 is freestanding in use;  
characterised in that:
- 1.7 said preform has been subject to a stretch ratio on the order of 10-20;
- 1.8 the sidewall thickness of the container body portion (112) is approximately 0.2-0.6 mm;
- 1.9.1 the container wall has a barrier against oxygen and carbon dioxide,
- 1.9.2 the barrier being achieved by blend technique;
- 1.10 and the container base portion (114) is a petaloid base."

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

## Reasons for the Decision

1. Inventive step, starting from the "Beer Sphere" public prior use

1.1 The opposition division considered that the prior use "Beer Sphere", involving a system for distribution and dispensing of beverages which was commercialized well before the priority date of the patent in suit, was the closest prior art.

The evidence related to this prior use taken into account in the appealed decision includes documents O3, O19, O21 as well as S1 to S9, with their respective annexes.

The opposition division found, after having discussed novelty of features 1.6.4, 1.7 and 1.8, that these were disclosed in the "Beer Sphere".

The opposition division then found that feature 1.9.2 "the barrier being achieved by blend technique" was new over the "Beer Sphere", but was not inventive over the combination of the "Beer Sphere" with the teaching of document O24.

The opposition division then acknowledged inventive step of claim 1 of the second auxiliary request on the basis of feature 1.10, which reads "the container base portion is a petaloid base".

1.2 The appellants contested the above findings and put forward that the subject-matter of claim 1 of the

second auxiliary request lacked inventive step, arguing as follows.

- 1.2.1 Referring also to a document first filed with their respective statements setting out the grounds of appeal (O40) the appellants argued that the appealed decision was based on an excessively restrictive interpretation of feature 1.10, because a skilled person would consider any base with petaloid feet to be a "petaloid base".

According to the appellants, feature 1.10 was not inventive because merely exchanging the ring-shaped champagne-type base of the "Beer Sphere" with a petaloid base would be an obvious design choice, also taught by documents O1, O2, O9, O18, all showing that both petaloid and champagne-type bases were well-known alternatives for achieving a freestanding container.

- 1.3 The respondent disagreed and requested not to admit document O40 into appeal proceedings. The respondent argued as follows, regarding inventive step.

- 1.3.1 The "Beer Sphere" was not a suitable starting point for discussing inventive step, because the intended use thereof was for dispensing larger quantities of beer compared to traditional bottles and cans.

The "Beer Sphere", being primarily designed and marketed for personal use and small private gatherings, was not intended to replace traditional metal kegs in commercial settings like pubs, bars, or stadiums.

A skilled person would therefore understand that the "Beer Sphere" had technical specifications which substantially differed from those of the claimed system (see paragraph [0002] of the patent in suit) which was designed for professional, high-volume use.

1.3.2 The "Beer Sphere" was not freestanding (feature 1.6.4), because it was consistently presented as needing to be placed in a box.

O21, page 3, and S1, Annex B13a, showed that a box was necessary for the "Beer Sphere" to stand upright.

The small base of the "Beer Sphere" made it unstable and unable to stand on its own, in particular taking into account that there was a considerable amount of liquid mass located outside the base footprint.

1.3.3 The findings of the opposition division on the lack of novelty of features 1.7 and 1.8 relied on unsupported assumptions and were based on a standard of proof ("balance of probabilities") which was not appropriate.

1.3.4 The opposition division failed to identify the presence of the synergistic effect between features 1.10 and 1.9.2.

1.3.5 The opposition division was however correct in finding that there was no motivation to modify the base of the "Beer Sphere" to obtain a petaloid base (feature 1.10), for the following reasons.

As the "Beer Sphere" was kept stable and freestanding through the use of an external box, there was no reason to change its base to a petaloid one.

Should the skilled person consider changing the base for increasing stability, they would not replace the known champagne-type base with small petaloid feet positioned in the proximity of the central axis of the container, as proposed by both appellants with the drawings at page 8 of each of their respective

statement of grounds of appeal, because small petaloid feet, such as those depicted therein, would be difficult to blow-mould, would introduce weak points, and the resulting container would be also less stable.

None of the alleged teachings identified by the appellant in documents O1 (paragraph [0023], O2 (figure 6, 7) and O9 (figure 5) would prompt the skilled person to modify the shape of the base portion of the "Beer Sphere", because these documents only relate to relatively small bottles, up to 3.5 litres, and in particular to soft drink bottles, and therefore to a completely different use case from the one of the "Beer Sphere" and also from the one of the patent in suit.

O18 also taught away from such a modification, because it states (column 4, lines 49 to 53):

"Because of space and blow molding limitations, a larger number of feet (e.g. seven or nine feet) might only be used in bottles having a capacity greater than three liters".

Contrary to the argumentation of the appellants, a skilled reader would not consider "petaloid" and "champagne" as equivalent alternative shapes for a container base, because paragraph [0016] of the patent in suit clearly explained that there were advantages linked to the petaloid shape, because it was more stable.

In addition, the modification proposed by the appellants would not even result in a "petaloid base" as claimed.

This was because when reading claim 1 a skilled person would construe the feature "petaloid base" in the

context of feature 1.2.2, which reads:

"said container (100) having a mouth portion (108), a shoulder portion (110), a base portion (114) and an essentially cylindrical body portion (112) extending between the shoulder portion (110) and the base portion".

A skilled reader would therefore understand that the contact areas of the feet with the ground would be positioned on a circumference which was centred on the axis of the essentially cylindrical body portion and had substantially the same radius thereof.

1.3.6 During oral proceedings the respondent also argued, for the first time, that feature 1.9.2 (blend technique) was inventive. It argued that although O24 taught gas barrier properties achieved by blend technique, the skilled person had no incentive to apply such recently discovered barrier properties from a scientific article to a very old container such as the "Beer Sphere".

1.4 The board is not convinced by the above arguments of the respondent and, on the contrary, finds that the appellants convincingly demonstrated the incorrectness of the appealed decision, for the following reasons.

1.4.1 The argument that the claimed device is specifically designed to be used for replacing metal beer kegs, whereas the "Beer Sphere" has a different use cannot be convincing because claim 1 does not contain any limitation related to this particular intended use.

As a consequence of the above, the board sees no reason for considering that the "Beer Sphere" is not a suitable starting point for discussing inventive step.

- 1.4.2 The "Beer Sphere" is freestanding (feature 1.6.4) because it has a centrally positioned base element of the champagne-bottle type (see S1, Annexes C2 and C4). With such a base configuration, the centre of mass always falls within the base, regardless of the fill level.

The arguments of the respondent mentioning the external box are not convincing because they are based on a misinterpretation of the purpose and function of the box.

Documents O21, S6 and S1, Annexes B9 and B13a consistently indicate that the box is used to contain ice for refrigerating the beer (O21), to increase shelf appeal (S1, annex B13a) and not to provide stability. Thus, the presence of the box does not negate the fact that the "Beer Sphere" container is freestanding, as is clearly visible in the first photograph (right hand side) of S1-B15.

- 1.4.3 The board also finds the respondent's arguments on the alleged use of an incorrect standard of proof in the appealed decision unconvincing.

This is because, when reviewing the evidence related to the "Beer Sphere", upon which the appealed decision is based, it is evident that all the relevant documents, although filed by the appellants, do not originate from the appellants themselves.

In fact all these documents come from third parties not directly involved in the opposition proceedings, such that the "Beer Sphere" prior use was not completely within the sphere of the appellants (see Case Law of the Boards of Appeal, 10th edition 2022, CLB in the



following, I.C.3.5.2, III.G.4.3.2).

The respondent has also not contested that the "Beer Sphere" system was designed and marketed by Johnson Enterprises, as evidenced in document S1 and its annexes. Johnson Enterprises licensed the technology to other third parties such as Metal Box (UK) for production and sale (see document S2). The appellants were thus not directly involved in either the development or the commercialization of the "Beer Sphere".

Document O21 is a brochure from Johnson Enterprises, a third party.

S1 is a declaration of Terence W. Staed, an employee of Anheuser-Busch (another third party).

S2 is a declaration of Geoff A. Giles, an employee of Metal Box (another third party).

S3, S4 and S5 are articles about the "Beer Sphere" system published in various magazines, whereby there is no evidence on file that the authors or the publications are associated with the appellants.

S6 is an extract from a published book.

The opposition division therefore was correct in concluding that the prior use "Beer Sphere" was not entirely within the sphere of the appellants.

The appropriate standard of proof was therefore the one used in the appealed decision, namely the "balance of probabilities".

- 1.4.4 The board, after having reviewed the relevant sections of the appealed decision (II.6.6.9 to II.6.6.14) and document S9, fully concurs with the appellants that there is no reason to conclude that the findings on lack of novelty of features 1.7 and 1.8 rely on

unsupported assumptions and are, on the face of it, not correct.

The board also notes that the respondent submitted the above allegation without providing any concrete reason to overturn these findings and in particular without discussing the declaration S9 which is the basis for the opposition division's calculations justifying their findings.

1.4.5 As a consequence of the above the board is convinced that the opposition division was correct in concluding that the only distinguishing features of the subject-matter of claim 1 of the second auxiliary request are:

- the barrier being achieved by blend technique (feature 1.9.2), and
- that the container base portion is a petaloid base (feature 1.10).

1.5 The board notes that the respondent's arguments submitted against the opposition division's reasoning that feature 1.9.2 is obvious with respect to the "Beer Sphere" in combination with the teaching of O24, are, irrespective of any consideration on the admissibility thereof, not convincing.

A skilled person would consider, when looking for a way to achieve barrier properties, also the teaching of O24, even if this document is more recent than those related to the "Beer Sphere".

This is because according to Article 56 EPC an invention shall be considered as involving an inventive step if, having regard to the "state of the art", it is not obvious to a person skilled in the art. The "state

of the art" for the purposes of considering inventive step comprises, as defined in Article 54(2) EPC, everything made available to the public by means of a written or oral description, by use, or in any other way, before the filing or priority date of the European patent application.

O24 therefore belongs to the state of the art to be considered.

- 1.5.1 Turning to the interpretation of "petaloid base", the board finds the appellants' position, according to which any base with petaloid feet would be a "petaloid base", particularly convincing, for the following reasons.

According to established case law (CLB, II.A.6.1, 6.3), the scope of a claim should not be limited by implying into the claim features that appear only in a drawing, such as figure 3 of the patent in suit, to which the respondent refers, thereby giving a different meaning to a claim feature that as such conveys a clear, plausible technical teaching to the skilled reader.

A broad term used in a claim is not to be construed narrowly, even if, as in the case at issue, the narrower interpretation would refer to a structure which is common, but not exclusive, in the technical field concerned.

When reading a broadly formulated claim only technically illogical interpretations should be excluded by a skilled reader.

The board sees therefore no reason for considering that the rather restrictive interpretation at the basis of

the appealed decision, would be the one chosen by a skilled reader and fully concurs with the broad interpretation of feature 1.10 proposed by the appellants.

As there is no need to rely on O40 to construe this feature, there is therefore also no need to discuss the issues, raised by the respondent (reply to the appeals, page 4, see also pages 1 to 3 of the letter, dated 5 February 2024, of appellant 2), in relation to the admittance of this document.

- 1.5.2 The board sees no merit in the respondent's assertion of a synergistic effect between features 1.10 and 1.9.2. The presence of this effect is not acknowledged in the appealed decision, and only alleged, but not demonstrated, by the respondent.  
No such effect is mentioned in the patent in suit or derivable therefrom.

The patent in suit discloses in paragraph [0033] that the only effect of the petaloid base (feature 1.10) is to make the container freestanding, and in paragraph [0017] that blend technique (feature 1.9.2) achieves a carbon dioxide barrier.

According to the established case law (CLB, I.D.9.3.2), partial problems exist if the distinguishing features are not functionally interdependent, i.e. do not mutually influence each other to achieve a technical success over and above the sum of their respective individual effects, in contrast to what is assumed in the case of a combination of features.

As a consequence of the above, the board concurs with the approach taken in the appealed decision to the

discussion of inventive step, which was aimed at establishing whether feature 1.10 and feature 1.9.2 are separately obvious in the light of the prior art (partial problems approach).

- 1.5.3 The appellants also correctly formulated the partial problem to be solved by feature 1.10 as the provision of an alternative base. This is because, as also acknowledged in the appealed decision, the "Beer Sphere" already achieves the only effect of a petaloid base mentioned in the patent in suit (to make the container freestanding).

It is established case law of the boards of appeal that the technical problem as originally presented in a patent might require reformulation on the basis of objectively more relevant elements (such as the "Beer Sphere" in the present case) originally not taken into account (CLB, I.D.4.4.2).

As the "Beer Sphere" is freestanding, the only contribution of feature 1.10 to the claimed system for distribution and dispensing of beverages is to propose a container base portion which is different from the prior art.

The partial technical problem related to feature 1.10 can therefore be reformulated, in view of the prior use "Beer Sphere", as the provision of an alternative freestanding base.

- 1.5.4 The respondent contested the above, arguing that there are advantageous effects of the claimed petaloid base with respect to the champagne type base of the "Beer Sphere", derivable from paragraph [0016] of the patent in suit.

The board is not convinced by this argumentation of the respondent.

The paragraph in question describes a freestanding container supported by legs forming a petaloid base, which ensures the container remains stable on a surface despite internal pressure. However, it does not highlight any specific advantage of the petaloid base compared to a champagne-style base. The paragraph focuses solely on the functionality of the petaloid base in providing stability under pressure, without addressing how it might be superior or different from a champagne base design. There is no direct comparison or benefit outlined in relation to the champagne base in this context.

1.5.5 The arguments of the respondent that there is no reason for a skilled person to replace the known champagne-type base with a petaloid base because the petaloid base

- is more difficult to blow-mould,
- introduces weak points, and
- is less stable,

are also not convincing, because there is, in the available evidence no basis for concluding that a petaloid base would present the above mentioned disadvantages.

The passage of O18 cited by the respondent in that respect, mentioning "blow molding limitations", does not contain any comparison between champagne bases and petaloid bases from which the disadvantages identified by the respondent could be derived.

1.5.6 As the problem to be solved is formulated as the provision of an alternative, according to the established case law (CLB, I.D.4.5) the skilled reader would take into account any alternative known in the underlying technical field, unless the closest prior art teaches away from it.

When looking for alternative configurations of the base, the skilled person does not require any inventive skill to make a selection from known freestanding bases already available in the technical field of blow moulded containers.

This is also because document O18 (figure 2 and column 1, lines 34-50 and column 4, lines 40-53) shows that petaloid bases and champagne-type bases are well known alternatives from which a skilled person would select, depending on the circumstances, when looking for a freestanding base for a container blow-moulded from a PET preform.

Document O9 (figures 4 and 5 as well as column 7, lines 60-67 where petaloid bases are mentioned, and column 1, lines 39-40, where champagne bases are disclosed) also teaches that with the same preform a container with a petaloid base and a container with a champagne type base can be obtained.

Documents O1 (par. [0023]) and O2 (figures 7 and 10, column 7, lines 15 to 20) also show that petaloid bases are well known and widely used to achieve freestanding containers.

1.6 In conclusion, the subject-matter of claim 1 according to auxiliary request 2 lacks an inventive step over the "Beer Sphere" system as closest prior art, in

combination with the teaching of document 024 (for distinguishing feature 1.9.2) and with any of documents 01, 02 and 09 (for feature 1.10).

2. Further documents

2.1 During written proceedings the respondent objected to the admission into the proceedings of documents S10, 038 and 039 provided by the appellants with their statements of grounds.

2.2 There is, however, no need to discuss any issue related to the admittance of these documents since, even if their content is disregarded, to the benefit of the respondent, the subject-matter of claim 1 of auxiliary request 2 is still to be considered as lacking inventive step, as set out above.

3. In the absence of any allowable request, the patent must be revoked.

**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.



The Registrar:

The Chairwoman:



G. Nachtigall

S. Watson

Decision electronically authenticated