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D E C I S I O N
of 9 February 1994

Case Number: T 0942/91 - 3.3.2

Application Number: 83830197.6

Publication Number: 0106814

IPC: A23G 9/12

Language of the proceedings: EN

Title of invention:
Household ice-cream machine

Patentee:
Brevetti Gaggia S.p.A.

Opponent:
Bimak S.p.A.

Headword:
Ice-cream machine/GAGGIA

Relevant legal norms:
EPC Art. 54, 56

Keyword:
"Novelty (yes) - combination of disclosures"
"Inventive step (yes) - non-obvious modification"

Decisions cited:
T 0153/85

Catchword:
-



Case Number: T 0942/91 - 3.3.2

D E C I S I O N
of the Technical Board of Appeal 3.3.2
of 9 February 1994

Appellant: Brevetti Gaggia S.p.A.
(Proprietor of the patent) I-20087 Robecco sul Naviglio (IT)

Representative: Klausner, Erich
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Respondent: Bimak S.p.A.
(Opponent) 35, Via Baldanzese
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Representative: Porsia, Attilio, Dr.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office dated and forwarded by post on
11 October 1991 revoking European patent
No. 0 106 814 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: P.A.M. Lançon
Members: R.E. Gryc
S.C. Perryman

Summary of Facts and Submissions

- I. European patent No. 106 814 comprising three claims was granted to the Appellant on 7 December 1988 on the basis of European patent application No. 83 830 197.6.
- II. The Respondent lodged an opposition. In reply, on 12 February 1990, the Appellant submitted an amended Claim 1 which reads as follows :

"Household ice-cream machine, comprising a supporting structure, an annular container (5) carried by the supporting structure with its axis extending vertically and adapted to hold a quantity of ice-cream ingredients, a blade (17) within the container, a geared motor (14) for rotating the blade (17) in the container, and a cooling system including a motor-compressor (19), a condenser (11) and an evaporator coil (9), the evaporator coil being adjacent the outer surface and the bottom of the annular container, wherein the annular container (5) is releasably supported by the supporting structure of the machine, and wherein the blade (17) is removably mounted on a vertical rotatable shaft (15) extending into the central cavity of the annular container (1) and the lower end of which is driven by the geared motor (15), characterized by the following features in combination :

- the upper edge of the releasable annular container (5) has an annular horizontal flange (6) resting on the said supporting structure and coupled thereto through releasable retaining means (26) adapted to prevent rotation of the annular container (5),
- the said support structure comprises an annular vessel (1) of high thermal-conductivity material

defining an interspace (8) between its inner wall and the said releasable annular container (5), and a thermal insulation (2) surrounding the said annular vessel (1),

- the evaporator coil (9) is fixed to the outer wall of the annular vessel (1),
- the interspace (8) comprised between the annular vessel (1) and the releasable annular container (5) is filled with a low-freezing-point liquid,

whereby the annular container (5) is easily removable from the annular vessel (1) by simply releasing the said blade (17) and the said retaining means (4, 26)."

III. On the basis of this amended Claim 1, the patent was revoked by a decision of the Opposition Division.

The ground for revocation was lack of inventive step of the subject-matter of Claim 1 in view of the state of the art disclosed in the following documents:

D1: US-A-3 952 538
D2: IT-A-1 131 232
D3: FR-A-1 417 038.

IV. The Appellant lodged an appeal and paid the relevant fee simultaneously.

In his Statement of Grounds he requested that the patent be maintained with Claim 1 filed on 12 February 1990 and Claims 2 and 3 as granted.

He reiterated the argumentation put forward before the Opposition Division i.e. since D1 excludes the use of a low freezing point liquid in a household ice-cream

machine and D2 does not disclose a machine having a stationary container, and since D3 teaches that the use of a saline solution is effective only in combination with a rotary freezing container, a combination of the teachings of D1, D2 and D3 is not realistic and fails anyhow to provide a machine according to Claim 1.

V. The Respondent did not reply to the argumentation of the Appellant. By a letter dated 13 December 1993 he requested the withdrawal of his opposition and informed the Board that he would not attend the oral proceedings which he had been notified would take place on 9 February 1994. Nevertheless, he remained a party to the proceedings.

VI. In a communication under Article 11(2) of the Rules of Procedure of the Boards of Appeal, the Board informed both parties that the machine according to D3 could be considered as representing the state of the art closest to the invention and that the problem to be solved by the skilled person starting from said prior art could be objectively determined as being the provision of a more simple, compact and movable ice-cream machine for domestic use.

This topic was proposed as starting point for the discussion at the hearing.

In reply, the Appellant informed the Board that he also would not attend the oral proceedings.

VI. Nevertheless oral proceedings took place on 9 February 1994 and although duly summoned none of the parties appeared.

In accordance with the provisions of Rule 71(2) EPC the proceedings were continued without them.

After having considered the following requests:

- From the Appellant (see letter dated 13 December 1991): Maintenance of the European patent on the basis of Claim 1 filed on 12 February 1990 and granted Claims 2 and 3,
- From the Opponent: No request,

the Board decided to maintain the patent in its amended form as requested by the Appellant.

Reasons for the Decision

1. *Admissibility*

After examination, the appeal has been found to be admissible.

2. *Amendments (Article 123 EPC)*

The substance of the subject-matter of Claim 1 on file remains exactly the same as that of Claim 1 as granted, only the form of the granted claim being changed with the following lines of its characterising portion:

- column 4, lines 3 to 5 and 24 to 26 of the patent being transferred to the preamble of the new Claim 1.

Therefore these amendments do not contravene the requirements of Article 123(2) and (3) EPC.

3. *Novelty*

3.1 Very early in the jurisprudence the Boards emphasised that, when assessing novelty within the meaning of Article 54 EPC, it is not permissible to combine separate items of prior art together and, in particular, that the disclosure of a prior document must be considered in isolation (see Decision T 153/85, O.J. 1-2/1988, 19).

Moreover, the teaching of a document shall not be interpreted as embracing well-known equivalents which are not disclosed in the document.

3.2 Consequently, it is not allowed to combine the teachings of D1, D2 and D3 in the way the Respondent did when determining novelty of the subject-matter of Claim 1 during the opposition proceedings.

Since neither D2 nor D3 discloses the provision of releasable retaining means adapted to prevent rotation of the annular container, these documents cannot destroy the novelty of Claim 1.

3.3 As far as the other available prior art documents are concerned, the Board is satisfied that none of them discloses an household ice-cream machine comprising in combination all the features described in Claim 1.

Therefore, the subject-matter of Claim 1 is novel and meets the requirement of Article 54 EPC.

4. *The closest state of the art*

4.1 Since the provision of two nested containers defining an interspace filled with a low-freezing-point liquid and the fixing of the evaporator coil to the outer wall of

the outer cooling container with a thermal insulation surrounding it appear to be essential according to the invention (see the disputed patent, column 2, lines 5 to 20), they will be treated as the technical basis serving to determine objectively the state of the art closest to the invention.

4.2 Taking into account the aforementioned considerations in combination with the fact:

- that the ice-cream machine described in D3 comprises the above mentioned features,
- that one of the problems solved by the teaching of this prior published document concerns the easy removal of the cream container for cleaning purposes (see D3, page 2, left column, lines 16 to 18 and page 3, right column, lines 5 to 7), and also
- that a domestic use of the machine according to D3 has never been explicitly excluded in this prior published document,

the machine disclosed in D3 is considered as representing the state of the art closest to the invention.

4.3 The machine according to Claim 1 differs from this closest prior art in that:

- the evaporator coil is adjacent not only the outer wall but also the bottom of the releasable cream container,
- the vertical shaft of the blade is driven at its lower end,

- the flange of the upper edge of the releasable cream container rests on the supporting structure, and
- said flange is coupled to the structure through releasable retaining means so that the cream container remains stationary and can be removed by simply releasing the blade and the retaining means.

5. *The problem and its solution*

5.1 The machine according to D3 is bulky, needs two rotating shafts for rotating respectively its cream container and its mixing blade and has to be pivotally mounted on a table.

Such a machine is thus not transportable and appears to have a rather complicated structure not actually adapted for domestic use (see the disputed patent, column 1, lines 25 to 51).

5.2 When taking into account the differences between the invention and said known machine (see section 5.3), the technical problem as objectively determined appears thus to be to render such a machine more suitable for domestic use i.e. to make it transportable and to simplify the sequence of operations needed to remove the cream container for cleaning purposes (see the disputed patent, column 1, lines 37 to 45).

6. *Inventive step*

6.1 The shaft of the blade of the machine according to D3 is distinct from the axis of rotation of the cream container and it is driven at its upper end (see the figure). Moreover, the last sentence of the description of D3 emphasizes that it is important that the cream container be rotatable.

Therefore, D3 alone does not give any hint in the direction of the new structural concept according to the invention, i.e. the use of a stationary cream container with the provision of an evaporator coil adjacent its bottom and the driving of the shaft of the mixing blade at its lower end through said bottom.

6.2 When consulting D2, the skilled person learns that the shaft of the mixing blade can be driven at its lower end through the bottom of the cream container (see Figure 3) but throughout the whole disclosure he would not find the slightest hint of a possible immobilization of this container.

Moreover D2 does not suggest any means for a uniform cooling of the bottom of the cream container if the said container were to remain stationary.

Therefore D2 discloses only a few of the essential features of the machine according to Claim 1 and there is *a priori* no reason for the skilled person to select these particular features and to combine them with other particular ones of the machine known from D3 whose structure is of a quite different conception.

And even if he were to do it, he would still not arrive at the invention now claimed because such a combination would comprise neither the means for preventing rotation of the cream container nor the means for insuring a uniform cooling of its bottom.

6.3 Since D1 is concerned in particular with the problem of providing a portable apparatus of a compact size suitable for use at home (see column 1, lines 40 to 51), the skilled person starting from the machine according

to D3 could expect to find assistance therein to arrive at a solution to the problem as described above in section 6.2.

However, from D1 he would not learn any more than from D2 i.e. that the rotating parts of the machine could be driven from underneath provided that the interspace between the inner wall (12) of the housing (11) and the outer surface of the cream container does not contain a liquid (see the end of column 4 and column 5, lines 1 to 4).

Consequently the given solution does not appear to be adaptable to a machine according to D3 having an interspace filled with a low-freezing-point liquid and the skilled man would not be disposed to embody the teaching of D1 on such a machine. Moreover, even if he were to do it, the cream container would still remain rotatable without retaining means and no evaporator coil would be provided adjacent its bottom i.e. the skilled person would still not carry out the invention.

6.4 As far as the other documents cited during the proceedings are concerned, the structural conceptions of the ice-cream machines that they describe are so different from each other and also from any one of the apparatuses according to either D1, D2 and D3 or the invention, that combinations of their teachings would not even be contemplated by the person skilled in the art and, since this has never been argued during the proceedings, there is no need for further detailed substantiation of this matter.

6.5 For the foregoing reasons, the Board is convinced that the improvement of the ice-cream machine known from D3 according to the teaching of Claim 1 cannot be derived

from the prior art in any obvious way, but rather involves an inventive step within the meaning of Article 56 EPC.

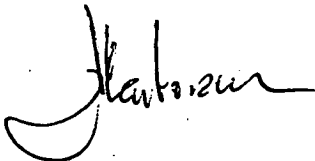
7. Therefore, the patent in suit may be maintained on the basis of the documents submitted in connection with the Appellant's last request filed on 20 December 1991 with his letter dated 13 December 1991.

Order

For these reasons, it is decided that:

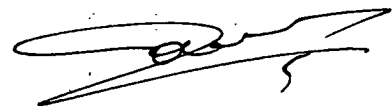
1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order that the patent be maintained on the basis of:
 - Claim 1 filed on 12 February 1990,
 - Claims 2 and 3 as granted and
 - Description and drawings as granted.

The Registrar:



P. Martorana

The Chairman:



P. Lançon