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**Datasheet for the decision  
of 1 June 2016**

**Case Number:** T 1451/12 - 3.2.07

**Application Number:** 04076806.1

**Publication Number:** 1473271

**IPC:** B67D1/06, B67D1/14, B67D1/08

**Language of the proceedings:** EN

**Title of invention:**  
Drink dispenser

**Patent Proprietor:**  
Heineken Supply Chain B.V.

**Opponent:**  
Carlsberg Breweries A/S

**Headword:**

**Relevant legal provisions:**  
EPC Art. 76(1), 100(c)

**Keyword:**  
Divisional application - subject-matter extends beyond content  
of earlier application - all requests (yes)

**Decisions cited:**

T 0689/90

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1451/12 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 1 June 2016**

**Appellant:** Heineken Supply Chain B.V.  
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**Respondent:** Carlsberg Breweries A/S  
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**Representative:** Budde Schou A/S  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 4 May 2012  
revoking European patent No. 1473271 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** G. Patton  
**Members:** K. Poalas  
C. Brandt

## **Summary of Facts and Submissions**

- I. The appellant (patent proprietor) lodged an appeal against the decision revoking European patent No. 1 473 271.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and inventive step), on Article 100(b) EPC (insufficient disclosure) and on Article 100(c) EPC (unallowable amendments).
- III. The opposition division found that claim 1 of the patent as granted did not meet the requirements of Article 100(c) EPC and that claims 1 of the first and second auxiliary requests filed with letter of 16 March 2012 did not meet those of Article 76(1) EPC. The opposition division found further that claim 1 according to one of the third and fourth auxiliary requests filed with letter of 16 March 2012 did not meet the requirements of Article 123(3) EPC and that claim 1 according to one of the fifth and sixth auxiliary requests filed during the oral proceedings did not meet those of Article 76(1) EPC.
- IV. Oral proceedings before the Board took place on 1 June 2016.

The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, alternatively, that the patent be maintained on the basis of one of the sets of claims filed with letter of 16 March 2012 as first and second auxiliary requests or on the basis of one of the sets of claims filed during the oral proceedings before the opposition division as fifth and sixth auxiliary

requests.

The respondent (opponent) requested the dismissal of the appeal.

V. The independent claim 1 according to the patent as granted (main request) reads as follows:

"Drink dispenser assembly (25, 27) comprising a dispenser device (25) with a cooling chamber (26), a hollows tap column (30) having a guide tube (35) and being supported on the cooling chamber, a dispensing head (29) on the tap column accommodating a flexible dispensing line (28), and a container (27) containing carbonated drink and connected during use to the dispensing line (28), wherein the cooling chamber is provided with a door for introducing the container into the cooling chamber and with an outlet opening in a top wall through which the guide tube (35) extends into the cooling chamber with a substantially vertically orientated section and with an entry end at an angle of approximately 90° to the section, characterized in that the dispensing line (28) has a shut-off valve (32) at an outlet end for connection to the dispensing head (29) and which can be easily pushed through the guide tube from the entry end to the dispensing head (29)".

Apart from two typographical amendments, namely the deletion of the character "s" in the term "hollows" and a comma added after the expression "characterized in that", claims 1 of the first and second auxiliary requests are identical with claim 1 of the main request.

In addition to the above-mentioned typographical amendments, the claims 1 of the fifth and sixth

auxiliary requests differ from claim 1 of the patent as granted in that the words "being supported on the cooling chamber" have been replaced by "being fixed to the counter of a bar that is supported on the cooling chamber".

VI. The following documents are mentioned in the present decision:

D0 WO 01/92142 (parent application)  
D1 DE 79 16 347 U  
D3 US 3 248 009 A  
D6 Catalogue Johnson Enterprises (published in 1989)  
D7 US 2 771 752 A  
D8 DE 297 11 600 U  
D11 NL 1 015 359 C  
D17 Webster's Third New International Dictionary, 1965,  
page 1574

VII. The appellant's arguments, in so far as they are relevant to the present decision, may be summarised as follows:

*Claim 1 according to one of the main, first or second auxiliary requests - Amendments,  
Articles 100(c), 76(1) EPC*

The feature that the hollow tap column is supported on the cooling chamber is implicitly disclosed in figure 2 of D0 in which the side walls of the cooling chamber 26 (chill compartment or refrigerator) can be seen to carry the counter of the bar 31 onto which the hollow tap column is mounted. An object supported on a chamber is physically carried by the side walls or the top wall defining the chamber.

Based on technical considerations against the background on the one hand of the drink dispensing system known from D6, said system having permanently installed flexible ducts of a remote refrigerated system extending from a beer cellar over a long length to dispensing heads on a bar that is situated somewhere in a building above the beer cellar, and on the other hand of drink dispensing systems known from D1, D3, D7 and D8, said systems having the corresponding hollow tap column supported on the cooling chamber in the sense that the tap column and dispensing head are placed substantially vertically above and in line with the cooling chamber and the beer container, the person skilled in the art derives from figure 2 of D0 that the hollow tap column is supported on the cooling chamber.

In the embodiment according to figure 2 of D0, which is for use in particular in catering establishments, the dispensing head 29 is part of a hollow tap column 30 that is fixed to the counter of a bar 31. For the details of this embodiment, D0 refers to D11, see page 8, lines 23 to 25. Hence this mounting of the dispensing head on a hollow tap column supported on the cooling chamber as described in D11 is relevant for the claimed invention and belongs implicitly to it.

The hollow tap column supported on the cooling chamber forms a part of the disclosure of D11. In figure 1 of D11 the tap column 8 is fixed to a tap surface 2 and the top surface of the refrigerator is positioned relatively close to the tap surface. According to figure 2 the tap surface 2 is connected to the top surface 34 of a refrigerator 4. A mounting bushing 26 creates a fixing connection between the refrigerator 4, the tap surface 2 and the tap column 8, see D11, page 13, lines 10 to 13. On page 9, lines 13 to 15 of D11 it

is specified that upon making a tapping device according to D11 the tap column may be mounted directly onto a refrigerator, wherein for instance the top surface of the refrigerator forms a tap surface.

On page 25 of D11, lines 4 to 6 it is explicitly stated that the tap column 8 may be directly attached to the top surface 34 of a refrigerator 4, for use of such a device in a recreational or domestic application, said first term also including catering establishments.

For the above reason *inter alia* also criterion c) under point 2.2 of T 689/90, OJ EPO 1993, 616, is fulfilled and hence the tap column supported on the cooling chamber finds a basis in D11 and can be incorporated into D0, i.e. into the patent in suit.

*Claim 1 according to the fifth and sixth auxiliary requests - Amendments, Article 76(1) EPC*

For the same reasons as those presented above for claim 1 according to the main request, the feature of claim 1 of the fifth and sixth auxiliary requests that the tap column 8 is fixed to the counter of a bar 31 that is supported on the cooling chamber 26, via the cooling chamber side walls, is implicitly disclosed in figure 2 of D0.

In D11 it is specified that the tap surface 2 and the top surface of the refrigerator 4 are interconnected by a mounting bushing 26, see page 13, lines 10 to 13. In claim 27 of D11 it is also specified that the tapping column is fixed to both the tap surface 2 and the refrigerator top surface 4. This clearly forms a basis for claim 1 of the fifth and sixth auxiliary requests specifying that the tap column is fixed to the counter



of a bar, which is supported on the cooling chamber via the hollow tap column fixed to both the counter and the cooling chamber's top surface.

The feature of the counter of a bar being supported on the cooling chamber can also be found in the prior-art documents D1, D3, D7 or D8, and is therefore implicitly disclosed for the skilled person familiar with these prior-art documents in the embodiment depicted in figure 2 of D0.

VIII. The respondent's arguments, in so far as they are relevant to the present decision, may be summarised as follows:

*Claim 1 according to one of the main, first and second auxiliary requests - Amendments,  
Articles 100(c), 76(1) EPC*

There is no information to be found in D0 for the feature of claim 1 that the hollow tap column (beerpull) is supported on the cooling chamber (chill compartment or refrigerator). On page 8, lines 11 to 12 it is stated that the dispensing head 29 is part of a hollow tap column 30 that is fixed to the counter of a bar 31. Further, figure 2 clearly shows that the hollow tap column 30 is fixed to the counter of a bar 31 and not to the cooling chamber which is positioned below the counter of a bar 31 and below the hollow tap column 30. There is thus a basis in D0 only for a hollow tap column that is supported on the counter of a bar 31. A supportive relationship between the hollow tap column and the cooling chamber is not derivable from D0.

No basis can be found in D0 for the appellant's assumption that the hollow tap column is carried by the

cooling chamber via the sidewalls of the cooling chamber, nor for its interpretation of the expression "supported on" in the sense of only defining a positioning of the hollow tap column vertically in line with the cooling chamber.

According to T 689/90, *loc. cit.*, point 2.2, an amendment based on a reference document is only allowable if the description of the invention as originally filed leaves a skilled reader in no doubt that the features disclosed in the reference document at least implicitly clearly belong to the description of the invention contained in the application as filed (see criterion c)).

The mere fact that on page 8, lines 23 to 25 of D0 it is stated that "The device described above is described in more detail in NL 1015359 C" cannot be construed as an indication that protection is sought for any details which are described in D11 but not in D0. The above-mentioned cross-reference is too general and vague to clearly delimit the parts of D11 which are or may be incorporated into D0. There is further doubt that the applicant was originally intending to seek protection for a hollow tap column supported on the cooling chamber, since D0 clearly shows the hollow tap column being supported on the counter of a bar and consequently the supporting of the hollow tap column on the cooling chamber, as now claimed in claim 1, would be at odds with the teaching of D0 and would require a serious re-designing of the cooling chamber depicted in figure 2 of D0.

Criterion c) of T 689/90 is therefore not met and thus there is no basis for the feature that the hollow tap column is supported on the cooling chamber to be

derived from D11 and be incorporated into D0, i.e. into the patent in suit.

None of the several specific examples shown in the figures of D1, D3, D7 and D8 can serve as a basis for the introduction of the feature that the hollow tap column is supported on the cooling chamber into claim 1 without any reference to the further specific structural details of the corresponding embodiment depicted therein.

*Claim 1 according to the fifth and sixth auxiliary requests - Amendments, Article 76(1) EPC*

For the same reasons as presented above for claim 1 according to the main request, the feature of claim 1 of the fifth and sixth auxiliary requests that the hollow tap column is fixed to the counter of a bar that is supported on the cooling chamber is not derivable from figure 2 of D0.

## **Reasons for the Decision**

1. *Claim 1 according to one of the main, first or second auxiliary requests - Amendments, Articles 100(c), 76(1) EPC*
- 1.1 It is undisputed that there is no explicit disclosure in D0 of the feature introduced into claim 1 of the patent as granted, namely that the hollow tap column is **supported on** the cooling chamber.
- 1.2 The question at stake is therefore whether said feature was implicitly disclosed in D0.

- 1.3 In a first line of argument the appellant submitted that figure 2 of D0 in combination with the corresponding passage on page 8, lines 1 to 15 of D0 read in the light of the skilled person's general technical knowledge and by interpretation of the expression "supported on", in particular in view of the definition of the term "on" given in D17, in the sense of only defining a positioning of the hollow tap column vertically in line with the cooling chamber, provided a basis for an implicit disclosure of the above-mentioned feature introduced into claim 1.
- 1.4 This cannot be followed by the Board for the following reasons.
- 1.5 Firstly, the feature of claim 1 that the hollow tap column is "supported on" the cooling chamber, i.e. in the sense of the complete expression "supported on" and not only the term "on", expresses the presence of a supportive function between the cooling chamber and the hollow tap column. Furthermore, there is no support to be found in D0 for the appellant's interpretation of the expression "supported on" in the sense of only defining a positioning of the hollow tap column vertically in line with the cooling chamber.
- 1.6 Secondly, figure 2 of D0 shows a drink dispenser device 25 in which the hollow tap column (beerpull) 30 is positioned vertically above and in direct contact with the counter of a bar 31. In the corresponding passage of D0 it is stated that the hollow tap column 30 is fixed to the counter of a bar 31, see page 8, line 12. A cooling chamber (chill compartment or refrigerator) 26 is further depicted in figure 2, which is part of the drink dispenser device 25 and is also positioned

underneath the counter of a bar 31.

- 1.7 The Board takes the view that one possible interpretation of the schematic cross-section of the claimed drink dispenser device 25 as depicted in figure 2 is that the two vertical (external) walls of the cooling chamber 26 can be considered as being realised via the corresponding lower parts of the two vertical external walls of the drink dispenser device 25 depicted therein. The counter of a bar 31 is positioned on, i.e. connected to, the top edges of the upper parts of said two vertical external walls of the drink dispenser device 25. On the other hand, the upper horizontal wall of the cooling chamber 26 extends parallel to and underneath the counter of a bar 31.
- 1.8 The Board notes in this respect that even if, as argued by the appellant, there were an implicit disclosure in figure 2 of a supportive effect between the cooling chamber and the hollow tap column, then this effect can only take place via the structural parts connecting said two structural elements with each other, namely via the counter of a bar 31 and the upper parts of the vertical walls of the drink dispenser device 25.
- 1.9 This means that there is then only **one specific type of connection**, if any, between the hollow tap column and the cooling chamber depicted in figure 2, namely via the counter of a bar 31 and the upper parts of the vertical walls of the drink dispenser device, which could make possible the development of such a supportive effect.
- 1.10 For the broadly formulated feature introduced into claim 1, namely that the hollow tap column is supported on the cooling chamber without any reference to the

above-mentioned specific type of connection between the hollow tap column and the cooling chamber as depicted in figure 2 and described in the corresponding passage on page 8, lines 1 to 15 of D0, no basis can be found in D0. As a matter of fact, said feature encompasses any type of connection(s) between the hollow tap column and the cooling chamber, namely both a direct and an indirect connection, connection(s) via any possible intermediate part(s), and also connection(s) based on any part of the cooling chamber. D0 does not disclose such kinds of connection(s).

1.11 The appellant argued further that based on technical considerations against the background on the one hand of the drink dispensing system known from D6, said system having permanently installed flexible ducts of a remote refrigerated system extending from a beer cellar over a long length to dispensing heads on a bar that is situated somewhere in a building above the beer cellar, and on the other hand of drink dispensing systems known from D1, D3, D7 and D8, said systems having the corresponding hollow tap column supported on the cooling chamber in the sense that the tap column and dispensing head are placed substantially vertically above and in line with the cooling chamber and the beer container, the person skilled in the art would derive from figure 2 of D0 that the hollow tap column is supported on the cooling chamber.

1.12 The Board cannot accept that for the following reasons.

1.13 There are several structural differences between the drink dispenser devices known from D1, D3, D6, D7 and D8 compared not only with each other but also with the one depicted in figure 2 of D0. Given that on the one hand a different specific type of connection between

the corresponding hollow tap column and the corresponding cooling chamber is disclosed in every one of said documents D1, D3, D6, D7 and D8, and on the other hand none of these specific types of connections is mentioned in claim 1 and further none of these documents discloses the general feature introduced into claim 1 that the hollow tap column is supported (directly or indirectly) on (any part of) the cooling chamber, the above-mentioned documents cannot serve as a basis for the introduction of said feature into claim 1. In particular, the Board does not share the appellant's view that the skilled person would immediately recognise that the drink dispenser of D0 belonged to the family of mobile dispenser like for instance that of D1 and D3 since the beerpull of the drink dispenser of D0 is also said to be fixed to a bar, i.e. also encompassing fixed apparatuses as in D6.

1.14 In a further line of argument, based on the one hand on the cross-reference to D11 on page 8, lines 19 to 25 of D0 and on the other hand on the disclosure of D11 in claim 27; page 9, lines 13 to 15; page 13, lines 10 to 13; page 25, lines 4 to 6; figures 1 and 2, the appellant argued that the criteria a) to d) set out in point 2.2 of T 689/90 were met, that the feature of the hollow tap column being supported on the cooling chamber was derivable from the above-mentioned parts of D11 and thus that said feature could be introduced into D0, i.e. into the patent in suit.

1.15 Again, the Board cannot agree for the following reasons.

1.16 According to the Case Law of the Boards of Appeal, 7<sup>th</sup> edition, 2013, II.E.1.6.1, third paragraph and T 689/90, (point 2.2 of the reasons, criterion c)),

features which are not disclosed in the description of an invention as originally filed but which are only mentioned in a cross-referenced document which is identified in such description may only under particular conditions be introduced into the claims of said application, namely *inter alia* if the description of the invention as originally filed leaves the skilled reader in no doubt that the features which are only disclosed in the reference document implicitly clearly belong to the description of the invention contained in the application as filed (Article 78(1)(b) EPC) and thus to the content of the application as filed.

- 1.17 In the present case, the general cross-reference on page 8, lines 23 to 25 of D0 to D11 does not specify any features implicitly clearly belonging to the description of the invention concerning the embodiment according to figure 2 of D0, nor are features disclosed in D11 precisely defined in the above-mentioned passage of D0.
- 1.18 Furthermore, the above-mentioned claim, passages and figures of D11 define two specific connections between the refrigerator 4 and the tap column 8, namely a specific indirect connection between the top surface 34 of the refrigerator 4 and the tap column 8 via a screw flange 38 and a mounting bush 26, see figure 2; page 13, lines 10 to 13; claim 27, and a direct connection between the top surface 34 of the refrigerator 4 and the tap column 8, see page 9, lines 13 to 15; page 25, lines 4 to 6. These two specific connections cannot form the basis for the general feature introduced into claim 1 claiming that the tap column is supported (directly or indirectly) on (any part of) the cooling chamber.



1.19 For the above reasons the Board considers that the general feature that the hollow tap column is supported on the cooling chamber is not disclosed in D11 and that the cross-reference on page 8 of D0 to D11 does not satisfy the above-mentioned criterion c) of point 2.2 of T 689/90.

1.20 Finally, the Board cannot follow the appellant's argument that the skilled person seeking to solve the problem of avoiding soiling when changing the drink container in the dispenser device, see page 2, lines 11 to 24 of D0, would immediately arrive at the above-mentioned broad feature introduced into claim 1. No hint towards such a general feature is to be found in D0 or in D11.

1.21 Therefore, claim 1 of the patent as granted does not meet the requirements of Article 100(c) EPC and claims 1 of the first and second auxiliary requests those of Article 76 (1) EPC.

2. *Claim 1 according to the fifth and sixth auxiliary requests - Amendments, Article 76(1) EPC*

2.1 The feature of claim 1 of the patent as granted that the hollow tap column is supported on the cooling chamber has been replaced in claim 1 according to the fifth and sixth auxiliary requests by the feature that the hollow tap column is fixed to the counter of a bar that is supported on the cooling chamber.

2.2 On page 8, line 12 of D0 it is stated that the hollow tap column (beerpull) 30 is fixed to the counter of a bar 31. The question at stake is therefore whether the feature that the counter of a bar is supported on the

cooling chamber was implicitly disclosed in D0.

2.3 As stated under point 1.6 above, figure 2 of D0 shows a drink dispenser device 25 in which the hollow tap column (beerpull) 30 is positioned vertically above and in direct contact with the counter of a bar 31. A cooling chamber 26 is further depicted in figure 2, which is part of the drink dispenser device 25 and is also positioned underneath the counter of a bar 31.

2.4 The Board takes the view that one possible interpretation of the schematic cross-section of the claimed drink dispenser device 25 as depicted in figure 2 is that the two vertical (external) walls of the cooling chamber 26 can be considered as being realised via the corresponding lower parts of the two vertical external walls of the drink dispenser device 25 depicted therein. The counter of a bar 31 is positioned on, i.e. connected to, the top edges of the upper parts of said two vertical external walls of the drink dispenser device 25. On the other hand, the upper horizontal wall of the cooling chamber 26 extends parallel to and underneath the counter of a bar 31.

2.5 The Board notes in this respect, that even if, as argued by the appellant, there were an implicit disclosure in figure 2 of a supportive effect between the cooling chamber and the counter of a bar, then this effect can only take place via the structural parts connecting said two structural elements with each other, namely via the upper parts of the vertical walls of the drink dispenser device 25.

2.6 This means that there is then **only one specific type of connection**, if any, between the bar counter and the cooling chamber depicted in figure 2, namely via the

upper parts of the vertical walls of the drink dispenser device, said upper parts making possible such a supportive effect.

2.7 For the broadly formulated feature inserted into claim 1 that the bar counter is supported on the cooling chamber without any reference to the above-mentioned specific type of connection between the bar counter and the cooling chamber as depicted in figure 2 and described in the corresponding passage on page 8, lines 1 to 15 of D0, no basis can be found in D0.

2.8 As argued under point 1.13 above there are several structural differences between the drink dispenser devices known from D1, D3, D6, D7 and D8 compared not only with each other but also with the one depicted in figure 2 of D0. Given that on the one hand a different specific type of connection between the corresponding bar counter and the corresponding cooling chamber is disclosed in every one of said documents D1, D3, D6, D7 and D8, and on the other hand none of these specific types of connections is mentioned in claim 1 and further none of these documents discloses the general feature introduced into claim 1 that the bar counter is supported (directly or indirectly) on (any part of) the cooling chamber, the above-mentioned documents cannot serve as a basis for the introduction of said feature into claim 1.

2.9 Concerning the features of the cross-referenced document D11 to be considered in D0, the reasoning given under points 1.16 to 1.20 above in respect to claim 1 of the patent as granted is applicable *mutatis mutandis* also to claim 1 according to the fifth and sixth auxiliary requests.

2.10 For the above-mentioned reasons claims 1 of the fifth and sixth auxiliary requests do not meet the requirements of Article 76(1) EPC.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated