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**Datasheet for the decision
of 18 January 2019**

Case Number: T 0871/14 - 3.4.03

Application Number: 08798790.5

Publication Number: 2198409

IPC: G07F13/06, A47J31/40, B67D1/00

Language of the proceedings: EN

Title of invention:
METHOD AND APPARATUSES FOR PROVIDING A SELECTABLE BEVERAGE

Applicant:
The Coca-Cola Company

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - after amendment - (yes)

Decisions cited:

Catchword:



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Case Number: T 0871/14 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 18 January 2019

Appellant: The Coca-Cola Company
(Applicant) One Coca-Cola Plaza N.W.
Atlanta, GA 30313 (US)

Representative: Dehns
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 18 November
2013 refusing European patent application No.
08798790.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: T. M. Häusser
W. Van der Eijk

Summary of Facts and Submissions

- I. The appeal concerns the decision of the examining division refusing the European patent application No. 08 798 790 for lack of inventive step (Article 56 EPC 1973).
- II. Reference is made to the following documents:
- D8: US-A-5,997,236,
D12: WO2006/058692,
D13: Baeyens F. et al, Parameters of Human Evaluative Flavor-Flavor Conditioning, LEARNING AND MOTIVATION 26, no. 2, 141-160, 1995.
- III. At the oral proceedings before the board the appellant (applicant) requested that the decision under appeal be set aside and a patent be granted as follows:
- Claims:
- claims 1-17 of the main request as filed during oral proceedings before the board on 18 January 2019,
- Description:
- pages 6-8, 10-13, 15, 18-25 as published,
 - pages 1 and 4 as filed with letter of 11 January 2011,
 - pages 2, 3, 9, 14, 16, 17 as filed during oral proceedings before the board on 18 January 2019,
- Drawings:
- sheets 1/2-2/2 as published.
- IV. The wording of independent claims 1 and 9 of the main request (sole request) is as follows:

"1. A method for providing a beverage having a separately selected color from a post-mix beverage dispensing system (10) comprising:

a. providing at least two substantially clear and substantially colorless beverage bases ($B_1, B_2 \dots B_N$) or beverages for dispense from the post-mix beverage dispensing system;

b. separately storing at least two unflavored colorants ($C_1, C_2 \dots C_N$) in the post-mix beverage dispensing system;

c. providing a user interface (14) for user interactions with a computer processor;

d. presenting via the user interface a choice of one of the beverage bases ($B_1, B_2 \dots B_N$), beverages or a blended beverage, wherein the blended beverage comprises at least two of the beverages;

e. presenting via the user interface a choice of at least two separately selected colors ($C_1, C_2 \dots C_N$);

f. providing the options of selecting a beverage wherein each beverage component is individually selected, selecting a beverage from pre-programmed selections, and selecting a beverage from a randomizing program;

g. receiving a request for a selected beverage base, beverage, or blended beverage and the separately selected color with the computer processor (18), wherein receiving the request of one of the beverage bases, beverages or blended beverage is via the user interface with the computer processor (18); and

h. in response to the selection of one of the selected beverage bases, beverages, or blended beverages and the separately selected color, automatically dispensing through a single dispensing nozzle (16) of the post-mix beverage dispensing system, continuously in a predetermined ratio for any volume of

the beverage dispensed, the selected beverage base, beverage or at least two of the beverages and at least one of the colorants to provide the beverage or blended beverage having the separately selected color and a beverage flavor independent from the separately selected color, and vice versa."

"9. A post-mix beverage dispensing system (10) for providing a beverage having a separately selected color, the post-mix beverage dispensing system comprising:

- a. at least two sources for providing at least two substantially clear and substantially colorless beverage bases ($B_1, B_2 \dots B_N$) or beverages for dispense from the post-mix beverage dispensing system;
- b. at least two colorant storage containers for separately storing at least two unflavored colorants ($C_1, C_2 \dots C_N$) in the post-mix beverage dispensing system;
- c. a user interface adapted to provide the options of selecting a beverage wherein each beverage component is individually selected, selecting a beverage from pre-programmed selections, and selecting a beverage from a randomizing program;
- d. a computer processor (18) for receiving a request for a selected beverage base, beverage or blended beverage and the separately selected color; and
- e. a single dispensing nozzle (16) for automatically dispensing, continuously in a predetermined ratio for any volume of the beverage dispensed, in response to the selection of one of the selected beverage bases, beverages or blended beverages and the separately selected color, the selected beverage base, beverage or blended beverage and at least one of the colorants to provide the beverage having the separately

selected color and a flavor independent from the separately selected color, and vice versa; wherein the user interface (14) is for user interactions with the computer processor (18), wherein the user interface is adapted to present a choice of one of the beverage bases ($B_1, B_2 \dots B_N$), beverages or a blended beverage and a choice of at least two separately selected colors ($C_1, C_2 \dots C_N$), and wherein the blended beverage comprises at least two of the beverages, and wherein the computer processor is adapted to receive a selection of one of the beverage bases, beverages or the blended beverage and a separately selected color."

- V. The appellant argued essentially as follows in relation to inventive step:

Document D12 did not disclose that the user was provided the options of selecting a beverage wherein each beverage component was individually selected, selecting a beverage from pre-programmed selections, and selecting a beverage from a randomizing program. The objective technical problem was to provide more options for the user. The claimed solution involved an inventive step over the available prior art, in particular over the combination of documents D12 and D8.

Reasons for the Decision

1. Amendments

Independent claims 1 and 9 are based on claims 1, 2, 8, 13, 15, 23, 30, and 37 as originally filed and on the description as originally filed (page 6, last paragraph; page 9, second paragraph; paragraph bridging

pages 13 and 14; page 16, first paragraph; page 18, first paragraph).

Dependent claims 2 to 8 and 10 to 17 are based on original claims 2, 5-7, 9, 11, 12, 17, 22, 24, 27, 29, 30, 34, 39 and on the description as originally filed (page 6, last paragraph; page 9, second paragraph; page 13, second paragraph; page 16, second paragraph; page 18, first paragraph). The description has been brought into conformity with the amended claims and supplemented with an indication of the relevant content of the prior art without extending beyond the content of the application as filed.

Accordingly, the board is satisfied that the amendments comply with the requirements of Article 123(2) EPC.

2. Inventive step

2.1 Closest state of the art

2.1.1 Claim 1 essentially corresponds to a combination of claims 1 and 2 of the third auxiliary request underlying the decision under appeal. In the decision the examining division considered document D13 the closest state of the art (see points 2.1 and 2.4 of the Reasons).

Document D13 relates to a psychological study concerning human flavor conditioning. The document was cited by the examining division as it disclosed flavorless colors and colorless flavors and hence beverages having independently selectable flavors and colors (see point 2.1.1.1 of the Reasons).

2.1.2 However, as detailed below, the board does not consider the issue of selecting the color and flavor of a beverage independently of each other decisive in relation to the inventive step of the claimed subject-matter.

In any case, in claim 1 there is no mention of colorless flavors and it is merely claimed that two "substantially clear and substantially colorless" *beverage bases or beverages* are provided and that at least two "unflavored" colorants are stored (see features a and b of claim 1). The former are well-known to the skilled person, (carbonated) water being an example. Moreover, in accordance with the relevant definition in the description of the application (see page 6, paragraph 5) "unflavored" colorants are taken to comprise also those colorants which have not been altered from their native flavors and are therefore also well-known to the skilled person. Colorants used in typical, relatively small amounts do not significantly change the flavor of the beverage, either.

In view of the above, the board does not consider document D13 the closest state of the art. Rather - as shown below - document D12 discloses subject-matter that is conceived for the same purpose as the claimed invention, namely for providing a colored beverage from a beverage dispensing system, and has the most relevant technical features in common with it. Document D12 is therefore regarded the closest state of the art.

2.2 Distinguishing features

2.2.1 Document D12 discloses (see page 7, second paragraph; page 8, second paragraph; paragraph bridging pages 8 and 9; page 11, last paragraph; Figure 1) a dispenser

100 including base storage chambers 102 that store beverage components and are in fluid communication with a base-liquid dispensing mechanism 106. Additive containers 112 store additives and are in fluid communication with an additive dispensing mechanism 116. A blending mechanism 130, which comprises a base-liquid dispensing nozzle 192 and additive nozzles 196, is provided in fluid communication with the dispensing mechanisms 106 and 116 and with a liquid source 120. Dispenser 100 also includes a controller 145 that is operatively connected to the dispensing mechanisms 106 and 116, the liquid source 120, and the blending mechanism 130. The containers 112 can store a variety of additives, such as concentrates, flavorings (e. g. vanilla extract), nutritional supplements, aromatics, and colorants.

The base-liquid dispensing mechanism 106 is also associated with the liquid source 120, which provides a liquid that can be blended in blending mechanism 130 with one or more beverage components and/or one or more beverages to provide a base liquid. Liquid source 120 may be a source of potable water, carbonated water, cream, juice, or milk.

Usually, controller 145 receives a selection of a desired flavored beverage from a human operator via a user interface. For example, controller 145 can receive a selection by detecting a mouse click, a keyboard entry, or keypad entry. In some embodiments, based on receiving that selection, controller 145 prepares the selected favorable beverage automatically. For example, the controller 145 may dispense the base liquid and the one or more additives according to the instructions in the storage media.

2.2.2 Using the wording of claim 1 document D1 discloses therefore a method for providing a colored beverage (using a colorant as additive) from a post-mix beverage dispensing system (dispenser 100) comprising:

a'. providing a substantially clear and substantially colorless beverage base or beverage ((carbonated) water) for dispense from the post-mix beverage dispensing system (dispenser 100);

b'. separately storing (in additive container 112) an unflavored colorant in the post-mix beverage dispensing system;

c. providing a user interface (user interface for entering a mouse click or a keyboard/keypad entry) for user interactions with a computer processor;

g'. receiving a request for a selected beverage base, beverage, or blended beverage with the computer processor (controller 145), wherein receiving the request of one of the beverage bases, beverages or blended beverage is via the user interface with the computer processor (controller 145); and

h'. in response to the selection of one of the selected beverage bases, beverages, or blended beverages automatically dispensing through dispensing nozzles (base-liquid dispensing nozzle 192 and additive nozzles 196) of the post-mix beverage dispensing system, continuously in a predetermined ratio for any volume of the beverage dispensed, the selected beverage base, beverage or at least two of the beverages and the colorant to provide the beverage or blended beverage having a color and a beverage flavor.

2.2.3 The subject-matter of claim 1 differs from the method of document D12 in that it relates to a method for providing a beverage having a separately selected color and in comprising:

- a'. providing at least two substantially clear and substantially colorless beverage bases or beverages,
- b'. separately storing at least two unflavored colorants,
- d. presenting via the user interface a choice of one of the beverage bases, beverages or a blended beverage, wherein the blended beverage comprises at least two of the beverages;
- e. presenting via the user interface a choice of at least two separately selected colors;
- f. providing the options of selecting a beverage wherein each beverage component is individually selected, selecting a beverage from pre-programmed selections, and selecting a beverage from a randomizing program;
- g'. receiving a request for the separately selected color,
- h'. dispensing the beverage in response to the selection of the separately selected color through a single dispensing nozzle and providing a beverage having separately selected color and flavor independent from the color, and vice versa.

2.3 Objective technical problem

The features concerning the color selection are not considered inventive. However - as shown in the following - features d and f related to the presentation of beverage options are considered to involve an inventive step. The effect of these features is to increase the number of beverage options available to the consumer. The objective technical problem is therefore to achieve this effect.

2.4 Obviousness

2.4.1 Document D12 discloses the second option in feature f related to the pre-programmed selections (see page 11, last paragraph), but not the first and third options related to the selection of the individual beverage components and the selection using a randomizing program, respectively.

2.4.2 In relation to the third option the only relevant document on file is document D8, which relates to a vending machine of bulk products.

The appellant argued that the skilled person would not consider document D8 as it was not located in the skilled person's technical field of beverage dispensing machines.

However, the board believes that the technical field of bulk vending machines is a neighbouring technical field of the technical field of beverage dispensing machines. The skilled person can be assumed to be aware of that neighbouring technical field and look for suggestions in it for solving the posed technical problem.

2.4.3 In detail, document D8 discloses (see column 4, second and third paragraphs; column 9, second paragraph - column 10, third paragraph) a bulk vending machine 100 for selling a mix of candies, e. g. "M&M's" chocolate candies of various colors.

In operation, a customer uses a touch screen 120 to make a selection and inserts money into the machine 100 to pay for the selection. The money is validated and the customer's selection is fed into a cup 132 dropped into the product delivery area 130. Customers may be presented the option of creating their own blend of "M&M's" chocolate candies by choosing up to six dif-

ferent candy colors or of selecting certain candy mixes for which the colors are predetermined (e. g. for the "AROUND THE WORLD" mix the colors are those of a certain country's flag).

Alternatively, the customers may select a "MYSTERY" mix, for which "a random mix selected by the machine 100 would be dispensed" (column 9, lines 52-56). In particular, the machine may be programmed in such a way that the MYSTERY mix contains those products that are not selling well or the most popular products whose bins are nearly empty just prior to a regularly scheduled refill visit (see column 9, last paragraph).

2.4.4 Hence, document D8 does not, in fact, contain any teaching of increasing the number of product options, but rather the teaching of obtaining various mixtures of given products (being distinguished only by their color). It would thus appear that the skilled person would not consider document D8 when attempting to solve the problem of increasing the number of beverage options available to the consumer.

Furthermore, the components of the "MYSTERY" mixes are in fact selected according to well-defined, predetermined and programmed rules (e. g. selecting unpopular products). Hence, even though these predetermined rules are of course unknown to the customer, which justifies the term "MYSTERY", there is no random element in this selection. Even if the skilled person were to consider document D8 when attempting to solve the objective technical problem, he would therefore not be led to the claimed "randomizing program".

In the board's view common general knowledge would not lead the skilled person to the claimed invention, either.

Therefore, the subject-matter of claim 1 involves an inventive step. Independent device claim 9 corresponds essentially to method claim 1. Claims 2 to 8 and 10 to 17 are dependent on claims 1 and 9, respectively.

Accordingly, the subject-matter of claims 1 to 17 involves an inventive step (Articles 52(1) and 56 EPC).

3. Conclusion

As the application documents of the main request satisfy the requirements of the EPC, a patent is to be granted on the basis of these documents.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a patent as follows:

Claims:

- claims 1-17 of the main request as filed during oral proceedings before the board on 18 January 2019,

Description:

- pages 6-8, 10-13, 15, 18-25 as published,

- pages 1 and 4 as filed with letter of 11 January 2011,
- pages 2, 3, 9, 14, 16, 17 as filed during oral proceedings before the board on 18 January 2019,

Drawings:

- sheets 1/2-2/2 as published.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated