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**Datasheet for the decision
of 2 May 2018**

Case Number: T 1517/14 - 3.2.04

Application Number: 08709510.5

Publication Number: 2129270

IPC: A47J31/44

Language of the proceedings: EN

Title of invention:

IMPROVEMENTS IN OR RELATING TO A MACHINE FOR THE PREPARATION
OF BEVERAGES

Patent Proprietor:

Kraft Foods R&D, Inc.

Opponent:

NESTEC S.A.

Headword:

Relevant legal provisions:

EPC Art. 83, 84, 123(2), 123(3), 54, 56
RPBA Art. 13

Keyword:

Late-filed request - admitted (yes)
Sufficiency of disclosure - (yes)
Amendments - allowable (yes)
Claims - clarity (yes)
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

T 0431/03, T 1018/02

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1517/14 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 2 May 2018

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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 May 2014 concerning maintenance of the
European Patent No. 2129270 in amended form.

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
C. Heath

Summary of Facts and Submissions

- I. The appellant-opponent lodged an appeal, received 25 June 2014 against the interlocutory decision of the opposition division posted on 21 May 2014 concerning maintenance of the European Patent No. 2129270 in amended form. The appellant paid the appeal fee on the same day. The statement setting out the grounds of appeal was filed on 18 September 2014.
- II. Opposition was filed against the patent as a whole and based on Article 100(b) with Article 83 EPC, lack of sufficient disclosure and on Article 100(a) together with Articles 52(1), 54 and 56 EPC for lack of novelty and inventive step.
- III. The division held, *inter alia*, that the patent as amended according to an auxiliary request met the requirements of the European Patent Convention. The division found that the invention according to claim 7 of that request was sufficiently disclosed, that claim 1 of that request was clear and that its subject matter did not extend beyond the patent as granted. Furthermore, the division held that the subject matter of claim 1 was new and inventive having regard to the following documents, amongst others:
- D1: EP1864598 A
D2: EP1739060 A
- IV. Oral proceedings before the Board were duly held on 2 May 2018.
- V. The appellant-opponent requests that the decision be set aside and that the patent be revoked.

VI. The respondent-proprietor requests, as a main request, that the the patent be maintained in an amended form, filed as auxiliary request 6 with letter dated 22 March 2018. Alternatively, that the patent be maintained on the basis of auxiliary request 6a filed with letter dated 22 March 2018.

VII. Claim 1 of the main request reads as follows:

"A beverage preparation machine (201) for dispensing beverages comprising:
a housing (210); a first reservoir station (120);
a first reservoir (220) for containing an aqueous medium, the first reservoir (220) being connectable to said first reservoir station (120);
characterised in that the beverage preparation machine (201) further comprises an auxiliary module (320);
wherein the auxiliary module (320) is, as required, mounted to the first reservoir station (220), wherein the auxiliary module comprises a first interface for connecting the auxiliary module (320) to the first reservoir station (120) and a second interface for connecting the first reservoir (220) to the auxiliary module (320) such that, on assembly, the auxiliary module (320) is located in between the first reservoir (220) and the first reservoir station (120)".

Claim 7 of the main request reads as follows:

"A beverage preparation machine (201) as claimed in any of the preceding claims wherein the second reservoir (280) contains aqueous medium at a temperature of between 5 and 30 degrees Celsius below ambient temperature".

VIII. The appellant-opponent argued as follows:

The main request should not be admitted, since it is late filed and does not overcome the problems of the patent as maintained.

Claim 1 of the main request is unclear as the feature "the auxiliary module is, as required, mounted..." is ambiguous, it could mean an auxiliary module of the type required should be mounted or that a module of unspecified type is mounted as and when a module is required.

The amendment also results in added subject matter as it has no direct basis in the application as filed.

In granted claim 1, an auxiliary module was always mounted, so claim 1 of the main request that includes the possibility one is not mounted, represents an extension of scope.

The invention of claim 7 is insufficiently disclosed, as ambient temperature means 20 to 25°C and cooling by 30°C, as claim 7 defines, would freeze up the machine so no beverage could be prepared and thus the invention cannot be carried out across the entire range of conditions claimed.

The subject matter of claim 1 is not novel vis-à-vis D1 and D2.

The subject matter of claim 1 lacks inventive step starting from D2 combined with the skilled person's general knowledge.

IX. The respondent-proprietor argued as follows:

The main request should be admitted, as it directly addresses the lack of clarity objected to.

Claim 1 of the main request is clear, it unambiguously defines that the "as required" feature relates to mounting of an auxiliary module *per se*, not to selecting an appropriate type of module.

No subject matter is added by the amendment to claim 1. Furthermore, since claim 1 as granted did not define that the auxiliary module was actually mounted, defining the possibility of the beverage machine functioning without the module in claim 1 of the main request does not represent an extension of subject matter.

Claim 7 is sufficiently disclosed. Ambient temperature can be above 30°C, so the skilled person can carry out the invention, also when cooling water for preparing a beverage by 30°C.

The subject matter of claim 1 is novel over D1 and D2.

The subject matter of claim 1 involves an inventive step starting from D2 combined with the skilled person's general knowledge.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The invention relates to a machine for preparing beverages (see published patent specification, paragraph [0001]). According to the invention the machine has, inter alia, a first reservoir and a first reservoir station, where these are connectable. The machine furthermore has an auxiliary module that, on assembly, is located between the first reservoir and first reservoir station (specification paragraph [0004] and claim 1 in all its versions).

3. Admissibility of the main request

3.1 The main request filed on 22 March 2018 is undoubtedly late filed, and its admission thus subject to the board's discretion under Art. 13(1) and (3) RPBA.

3.2 The Board considers that the present main request (filed as auxiliary request 6) represents a legitimate response to the Board's change of opinion at the oral proceedings as regards the lack of clarity arising from the amendment "an auxiliary module as required mounted to the first reservoir station". The new formulation in particular clearly aims to remove the ambiguity discussed in relation to the previous requests by clarifying what was "as required" in the above feature. That it was filed before the oral proceedings is immaterial.

3.3 Nor, in the Board's opinion, does the amendment extend the scope or framework of discussion, as it restricts the claim to one of the alternatives encompassed by the original ambiguous formulation. Thus, the framework of discussion is narrowed rather than extended.

3.4 In the Board's opinion the amendment also does not raise any new issue that would require adjournment of the proceedings, nor did the appellant-opponent consider adjournment to be necessary. In particular, the Board sees no issue of added subject matter, Article 123(2) EPC. This is because, *prima facie*, the idea of using an auxiliary module (*per se*), when required, is presented throughout the patent as one of the two alternatives, see paragraphs [0034] and [0054]. The remaining issues, such as novelty and inventive step, are the same issues as were on file from the beginning of the appeal for claim 1 as maintained.

3.5 Therefore, the Board decided to admit the main request (filed as auxiliary request 6), pursuant to Articles 13(1) and 13(3) RPBA with Article 114 (2) EPC.

4. Main request, clarity

In the Board's opinion, claim 1 is clear.

By defining that the auxiliary module *is* mounted to the first reservoir station, qualified by this being "as required", the claim unambiguously defines that the auxiliary module comprised in the beverage preparation machine may or may not be mounted as required. In this respect, it is not relevant whether or not the paragraph of the description (see patent specification as published, paragraph [0051]), which, with its

similar wording, may have inspired the amendment to claim 1, is ambiguous, as this reformulation in the Board's view removes that ambiguity. According to established jurisprudence, a discrepancy between the claims and the description is not a valid reason to ignore the clear linguistic structure of a claim and to interpret it differently (see T 431/03, reasons point 2.2.2) or to give a different meaning to a claim feature which in itself imparts a clear credible technical teaching to the skilled person, which also applies when the feature has not been initially disclosed in the form appearing in the claim (see T 1018/02, catchword and reasons 3.8).

5. Main request, added subject matter, Article 123(2) EPC

The concept of a beverage preparation machine comprising an auxiliary module that may or may not be mounted is a central idea of the invention and presented at various places throughout the application as filed. Thus, the patent specification, paragraph [0034] and figure 6, which has a first image showing a reservoir fitted to a reservoir station without auxiliary module, shows a sequence of removing this reservoir (second image), fitting an auxiliary module (third image), then fitting a reservoir on top of the auxiliary module. Paragraph [0054] makes a general statement about the invention regarding the auxiliary modules, prefixed with the condition "where fitted" (column 8, last two lines), so disclosing that they may or may not be fitted. This idea is then reiterated (column 9, lines 2 to 5) where it is explained that one, two or more auxiliary modules may be used. In other words they may be used, but are not necessarily used.

Therefore no subject matter is added by unambiguously claiming this originally disclosed idea.

6. Main request, extension of protection conferred,
Article 123(3) EPC

Claim 1 as granted defines a beverage preparation machine comprising, inter alia, a first reservoir station, a first reservoir and an auxiliary module. The auxiliary module has first and second interfaces for connecting it to the first reservoir and first reservoir station. Thus, whilst these are suitable for making such a connection the claim is not limited to a machine in which such a connection is made.

Furthermore, the last feature of the claim defines that the auxiliary module interfaces are "such that, on assembly, the auxiliary module is located in between the first reservoir and the first reservoir station".

Thus, this feature defines the location of the auxiliary module if and when the machine is assembled, without requiring that the machine is always in its assembled state. Thus, in the Board's view, claim 1 as granted covers a beverage preparation machine that must always comprise an auxiliary module but which does not require that this module is always mounted in the assembled machine.

As with granted claim 1, claim 1 of the main request defines a beverage preparation machine that "comprises" an auxiliary module. Thus in this respect, the scope of the claims are no different. By clarifying that the mounting is as required, the new formulation narrows the claim scope to only one of the two previous possible readings (which rendered it ambiguous).

Consequently the protection conferred by claim 1 is not inadmissibly extended, Article 123(3) EPC.

7. Main request, sufficiency of disclosure, Article 100(b) EPC with Article 83 EPC, claim 7

In the Board's opinion the invention according to claim 7 is disclosed sufficiently clearly and completely for the skilled person to be able to carry it out.

The skilled person reads the claim with a mind willing to understand, giving terms their usual meaning. The usual meaning of "ambient" is "existing or present on all sides : encompassing - the ambient air temperature - ambient light - ambient sound." (cf. Merriam Webster online dictionary).

Thus the ambient temperature is the temperature of the surrounding environment, where ever that might be. Thus the skilled person will not understand the term "ambient temperature" as making reference to a particular temperature range (20-25°C as the appellant-opponent would have it) but rather as defining any temperature in the human environment in which a beverage machine might be operated, which the Board holds may be considerably greater than 25°C, for example above 30°C. Nor does the description tell a different story. Consistent with this interpretation it explains (see published patent specification, paragraph [0010]) that the ambient temperature will vary according to the local climate in which the machine is used.

In claim 7 a temperature differential of between aqueous medium between 5 and 30°C below ambient temperature is defined. Thus, bearing in mind the above

interpretation of "ambient temperature" (it may be above 30°C), it is possible for the skilled person to carry out the invention also when an aqueous medium is cooled by 30°C below ambient temperature (without the medium freezing). Therefore, the Board holds that the skilled person can carry out the invention according to claim 7 across its entire scope.

8. Main request, novelty

8.1 Novelty vis-à-vis D1

8.1.1 The skilled person reads claim 1 giving the terms their usual meaning. "Located" (see the last feature of claim 1) is the participle of the verb to locate, which is usually understood, in the sense of establishing a relationship between objects, to mean "to set or establish in a particular spot: station: located the clock in the exact center of the mantel" (cf. Merriam Webster online). Thus the word "located" in claim 1 defines that, when the beverage preparation machine is assembled with an auxiliary module, the module is in a particular spot, namely between the first reservoir and the first reservoir station, rather than defining how these elements functionally interact as the appellant-opponent has argued.

8.1.2 D1, (see paragraphs [0006], [0014], [0019] and [0033] to [0054] with figures 1 to 3) discloses a beverage preparation machine for dispensing beverages. The machine has a first reservoir 14 and a production module 1. The machine also comprises a docking station 2.

According to the appellant-opponent, the production module 1 can be considered to be a first reservoir

station, since it is connected with and receives water from the reservoir 14 (see paragraphs [0037] and column 6, lines 17 to 24). Furthermore, since the production module can be used autonomously, that is without the docking station 2 (see for example paragraph [0038]), the docking station 2 can be considered as an auxiliary module that is, as required, mounted to the first reservoir station.

8.1.3 Based on this analysis, in each embodiment of figures 1 to 3, the auxiliary module (docking station 2) is not, on assembly, located (in a particular spot) in between the first reservoir 14 and the first reservoir station (production module 1). Rather, the auxiliary module 2 is located below both the reservoir 14 and the first reservoir station 1.

8.1.4 Therefore, D1 does not take away the novelty of claim 1 as the appellant-opponent has argued.

8.2 Novelty vis-à-vis D2

8.2.1 D2 discloses a beverage preparation machine (see for example claim 24) for dispensing beverages comprising: a housing; a first reservoir station (see paragraph [0042] with figure 1, water supply of coffee machine 3). The machine also comprises a first reservoir (tank 2) for containing an aqueous medium and which is connectable to said first reservoir station (figure 1). The machine furthermore comprises a module (removable water treatment module 18, see paragraphs [0024], [0079] and figures 1 and 2). The module can be considered an auxiliary module in the sense that it can be removed from the machine in order to replace or refill it (paragraph [0039]). The module comprises (see paragraph [0079] with figures 1 and 3 and claim 19) a

first interface for connecting it to the first reservoir station and a second interface for connecting the first reservoir to the module such that, on assembly (see figures 1 and 3), the module 18 is located in between the first reservoir 2 and the first reservoir station 3.

Thus, novelty hinges on whether D2 discloses that the module 18 "is, as required, mounted to the first reservoir station" 3 (in the wording of claim 1).

8.2.2 Recalling again that the Board understands this feature to unambiguously define that an auxiliary module, of what ever type, is mounted as and when required so that the beverage preparation machine likewise functions when the auxiliary module (which the machine always comprises) is not mounted, the Board must examine whether the machine of D2 works in the same way. In the Boards view, this is not the case.

8.2.3 It is not in dispute that the auxiliary module 18 (water treatment module 18) can be mounted and is removable (see paragraph [0024]). However, in the Board's opinion, once the auxiliary module 18 is removed, the machine of D2 no longer functions. In particular (see paragraphs [0051] to [0052] with figures 1 and 2), the water tank 2 is provided with a plug 35 that is biased closed by a helical spring. The auxiliary module 18 is provided with push elements 27 that push the plug 35 open, against the force of the spring, when the auxiliary module is fitted.

By the same token (see paragraph [0075]), the auxiliary module 18 is fitted with a valve plug 7, biased closed by a spring 26, so that it tightly seals and closes off the outlet of the module 18. However (see paragraph

[0076]), when the module 18 is assembled on the machine reservoir station part 3, push elements overcome the spring force to push up the plug and so open the valve.

Thus, when the machine is properly assembled with the auxiliary module 18 mounted, the water tank and beverage machine are in fluid connection (column 9, lines 24 to 27). However, when the user removes the auxiliary module 18, that is disassembles the machine, this fluid connection is automatically decoupled (column 9, lines 27 to 31). So here, D2 discloses that with the auxiliary module 18 removed, the beverage machine will not function (be able to dispense a beverage) as claim 1 requires.

- 8.2.4 Nor does the Board consider that D2 implicitly discloses, that is that the skilled person would directly and unambiguously derive from the explicit features of D2, that the water reservoir 2 would fit to and make a fluid connection with the reservoir station 3 of the beverage machine 1 in the absence of the auxiliary module 18, so that the machine would function without the module 18.

It is true that, as already explained, both the plug 35 of the water tank 2 and the valve plug 7 of the auxiliary module are opened by being pushed up. However, it is neither disclosed that the plug 35 and valve plug 7 and their respective push elements are the same nor that they are interchangeable. This is also not derivable from the drawings.

Both push up elements are shown in figure 3. Contrary to how the appellant-opponent has argued, the Board is not of the opinion that the opening mechanisms of the respective interfaces of reservoir 2 and auxiliary

module 18 are identical (cf. grounds of appeal, last paragraph of page 11 and first paragraph of page 12). Rather, the Board holds that it is immediately evident from figure 3 (see also its annotated version, grounds of appeal, page 11) that the sealing plug 35 of the reservoir 2 is considerably shorter than the valve plug 7 of the auxiliary module 18, and the respective push-up elements are correspondingly of different lengths.

Thus, even if it were possible to place the reservoir 2 directly on the reservoir station 3, the shorter push up elements designed to push up the longer plug 7, appear to be considerably too short to reach, let alone push open the short plug 35. Therefore no fluid connection would be made and the machine would not function.

Otherwise there is nothing in D2 that suggests that the machine can be used without the unit 18. Indeed this would appear to go against its underlying business concept, which appears to be based on the indispensability of the unit 18 for proper operation.

8.2.5 Therefore, the Board is of the opinion that D2 does not disclose that the auxiliary module 18 is, as required, mounted to the first reservoir station 3. Consequently it cannot take away novelty of claim 1.

9. Main request, inventive step starting from D2 with the skilled person's general knowledge

9.1 Starting from the above identified differing feature (auxiliary module is, as required, mounted...), the patent itself does not explicitly state the effects of this feature. However, it is clear that allowing the machine to operate with or without the module as

required increases its versatility or functionality. The technical effect of the above difference is an improved functionality.

9.2 Accordingly, the objective technical problem can be formulated as how to improve the machine of D2 to increase its functionality. In this respect the Board notes that to formulate the problem more narrowly as the provision of a beverage machine that can be used more flexibly (another way of saying increased functionality) because it can be used with or without an auxiliary module (cf. grounds of appeal, page 14, second paragraph) is not appropriate since this would partially anticipate the solution (see CLBA, I.D.4.3.1, and the decisions cited there).

9.3 In the Board's opinion, the claimed solution would not be obvious starting from D2 in combination with the skilled person's general knowledge.

9.3.1 D2 discloses, first and foremost a water treatment system (title). The description opens (see paragraph [0001]) by stating that the invention relates to water treatment units, whilst (see paragraphs [0008] and [0010]) the aim of that invention is said to be to improve design of a water treatment [system] and providing a more convenient solution of water treatment cartridge [module] system. Consistent with these aims, independent claim 1 defines a water treatment unit, independent claim 19 a water treatment module and independent claim 26 a process for treating tap water.

Thus the whole thrust of D2's teaching is water treatment. At the heart of this water treatment lies the module 18, with its water treatment substance (see for example paragraph [0045]). Thus the water treatment

module 18 is the cornerstone on which the teaching of D2 is built. With this in mind, the Board holds that, tasked with the objective technical problem (increased functionality), however the skilled person might consider modifying the system of D2, this would not involve enabling the machine to brew a beverage without the water treatment module 18. Thus, for this reason alone, it would not be obvious for the skilled person to modify the system of D2 so that it functioned (brewed a beverage) without the water treatment module 18 being mounted, however temporarily.

9.3.2 Nor, in the Board's opinion, does D2 hint at the claimed solution because it discloses a modular approach to water treatment. The modularity in D2 is concerned with being able to separate the water treatment unit 18 from the rest of the machine as an independent module (see column 9, lines 7 to 11), in contrast to arrangements where, for example, the reservoir and water treatment unit are made in one piece (cf. paragraph [0039]). That said, the water treatment module 18 is only removed in order to replace/refill it (see paragraph [0039] again and paragraphs [0045] and [0079]). When this is done, water flow from the reservoir to the rest of the machine is automatically decoupled (column 9, lines 27 to 31). Thus there is no hint to provide the water treatment unit as an auxiliary module in the sense of a unit that can be removed whilst the machine continues to function (here, be usable for preparing a beverage).

9.3.3 In the Board's opinion the skilled person would also not, as a matter of obviousness, simply dispense with the water treatment unit if it becomes depleted and no new one is available, as this is contrary to D2's central teaching that the unit is indispensable. Moreover, this would require modification of the tank valve, which in the Board's opinion, goes beyond routine skill.

9.4 For the above reasons, the Board holds that the subject matter of claim 1 of the main request involves an inventive step.

Taking into account the amendments made to the patent according to the respondent-proprietor's main request, including amendments made to the description during the oral proceedings before the Opposition Division, the Board finds that the patent and the invention to which it relates meet the requirements of the European Patent Convention, Article 101(3) a) EPC. Therefore the patent can be maintained according to the main request.

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 to maintain the patent in the following version:

Claims:

1 - 18 of the Main Request filed as Auxiliary Request 6 with letter dated 22 March 2018;

Description:

Pages 1 and 2 as filed during oral proceedings before the opposition division,
Pages 3 - 6 of the published specification;

Drawings:

Figures 1 - 10 of the published specification.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated