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Datasheet for the decision of 7 May 2019

Case Number: T 1470/15 - 3.2.04

Application Number: 08250344.2

Publication Number: 2085000

IPC: A47J31/40

Language of the proceedings: EN

Title of invention:
Coffee brewer and a corresponding network-based method and apparatus

Patent Proprietor:
Koninklijke Douwe Egberts B.V.

Opponent:
Société des Produits Nestlé S.A.

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 123(2), 100(b)

Keyword:
Novelty - (yes)
Inventive step - (yes)
Amendments - allowable (yes)
Grounds for opposition - insufficiency of disclosure (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1470/15 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 7 May 2019

Appellant: (Opponent)	Société des Produits Nestlé S.A. Entre-deux-Villes 1800 Vevey (CH)
Representative:	Kiwit, Benedikt Mitscherlich PartmbB Patent- und Rechtsanwälte Postfach 33 06 09 80066 München (DE)
Respondent: (Patent Proprietor)	Koninklijke Douwe Egberts B.V. Vleutensevaart 35 3532 AD Utrecht (NL)
Representative:	Boult Wade Tennant LLP 5th Floor, Salisbury Square House 8, Salisbury Square London EC4Y 8AP (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 4 May 2015 rejecting the opposition filed against European patent No. 2085000 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	A. de Vries
Members:	S. Oechsner de Coninck
	W. Ungler

Summary of Facts and Submissions

I. The Appellant (Opponent) lodged an appeal, received on 3 July 2015 against the decision of the opposition division dated 4 May 2015 to reject the opposition against the patent EP 2 085 000, and paid the appeal fee the same day. The statement setting out the grounds of appeal was filed on 10 September 2015.

II. Opposition was filed against the patent as a whole and based on Article 100(a) together with 52(1), 54(3) and 56 EPC, Article 100(b) together with 83 EPC as well as Article 100(c) together with 123(2) EPC.
The opposition division held that the grounds for opposition mentioned in Article 100 (a),(b) and (c) EPC did not prejudice the maintenance of the granted patent unamended having regard to the following documents in particular:

D11: US 2007/175334 A1
D13: US 2007/0203587 A1
D14: WO 03/005295 A1
D16: WO 01/043088 A1

III. Oral proceedings were held on 7 May 2019.

IV. The Appellant (Opponent) requested that the decision under appeal be set aside and the European patent be revoked.

V. The Respondent (Proprietor) requests that the appeal be be set aside and the patent be maintained in amended form according to the main request filed on 7 May 2019 during oral proceedings, alternatively that the decision under appeal be set aside and the patent be maintained in amended form on the basis of auxiliary

requests 1 to 10 filed with letter dated 23 February 2015, or on the basis of auxiliary requests 11 to 13 filed with letter of 27 January 2016, or on the basis of auxiliary requests 4a, 9a or 12a filed with letter of 14 March 2019.

VI. The independent claims according to the main request read as follows:

"1. A coffee brewing apparatus (100) that comprises: means (101) for brewing coffee beverages; a sensor (103) configured and arranged to sense food components as used by the means (101) for brewing coffee beverages; an external network interface (105) configured and arranged to facilitate interfacing with a remote resource; an end user interface (104); a processor (102) operably coupled to the sensor (103), the external network interface (105), and the end user interface (104); wherein the processor (102) is configured and arranged to independently use information regarding the sensed food components to obtain responsive information from the remote resource (107); characterized in that the sensor senses information provided on a coffee pod containing said food components and that the processor (102) is configured to present the responsive information to an end user via the end user interface (104)."

"12.A method comprising: at a coffee brewing apparatus (100) detecting information provided on a coffee pod containing food components being used by the coffee brewing apparatus (100); using a native external network interface (105) to independently contact a remote resource (107) and provide information to the remote resource (107) regarding the food components; receiving from the remote resource (107), via the native external network interface (105), responsive

information; using a native end user interface (104) to present the responsive information to an end user of the coffee brewing apparatus (100)."

VII. The Appellant argues as follows:

- Concerning admission of the main request, the respondent has had many opportunities to take into account the objection on added-matter, therefore the filing of the main request during oral proceedings should not be admitted.
- Concerning sufficiency, the inconsistent use of the expression "food component" to define either the coffee pod or its food content contains the non workable possibility of having a food component that contains itself.
- With respect to added-matter, the deletion of the verb "facilitate" introduces the originally undisclosed possibility that the processor directly obtains information by itself. The original application as filed discloses the ability of sensing any type of information only in relation with specific types of sensors, that are not defined in the claim therefore resulting in an unallowable intermediate generalisation.
- As for novelty, D14 describes a beverage vending machine also able to dispense coffee and therefore discloses all the features of claim 1.
- Relating to inventive step: the beverage dispenser of D14 also uses individual servings of the food product in the form of single serving packets (e.g page 17, last sentence of paragraph 2). Assuming the differences concerns the capability of brewing coffee, and sensing information of a coffee pod, these differences represent trivial modifications within the scope of routine adaptation for the skilled person. Also starting from D13, the skilled person would obviously

have adapted the sensor to sense information on the coffee pouches as suggested in any of D14,D16 or D11 in order to increase accuracy of the information provided to the end user.

VIII. The Respondent argues as follows:
- The new main request should be admitted because it deletes the feature critical for added subject-matter without introducing new matter not already present in the proceedings.
- The disclosure of the invention contains workable information on the type "food component" that is defined in the claims.
- There is no intermediate generalisation because sensing information of any type was disclosed in paragraph 18, using any type of sensors in general.
- D14 does not disclose a machine suitable for brewing coffee, because it uses powder or concentrate to produce the different types of beverages. The skilled person would furthermore not have any reason to modify this machine in order to brew ground coffee contained in pods without hindsight.
- Starting from D13, none of the proposed documents D14,D16 or D11 suggests to individualise responsive information from the Internet on coffee pods. In modifying D13 the skilled person would still display information in relation to coffee enclosed in containers.

Reasons for the Decision

1. The appeal is admissible

2. Main request - Admissibility Art 13(3) RPBA

2.1 The main request was filed at the end of the oral proceedings before the board, and amounts to an amendment to the Respondent-proprietor's case in the sense of Article 13 of the Rules of Procedure of the boards of Appeal (RPBA). Furthermore, under Article 13(3) RPBA any amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the board or the parties cannot reasonably be expected to deal with without an adjournment.

2.2 The approach consistently adopted by the boards when exercising their discretion under Art 13(3) RPBA in admitting new request is that, unless a justification exists, to admit such a request only if it does not extend the scope or framework of discussion as determined by the decision under appeal and the statement of the grounds of appeal, and is moreover clearly allowable, see Case Law of the Boards of Appeal, 8th edition, 2016 (CLBA) IV.E.4.2.6 b) and the case law cited therein.

2.3 The main request deletes from apparatus claim 1 and method claim 12 the alternative of sensing the presence of the coffee pod. This alternative had been added to the claims upon grant corresponding to the Respondent's then request. After having discussed novelty, inventive step and sufficiency of disclosure, for which the Board found in favour of the Respondent, this was the sole issue that remained to be discussed. The Board held this amendment to contravene the provision of Art 100(c) in combination with 123(2) EPC, whereupon the Respondent filed the present new main request, with the objectionable deficiency removed from the claims.

That the amendment by omission in claims 1 and 12 resolves the issue of added subject-matter is self-evident. The omission also does not raise any new issues nor did the Appellant identify any. The auxiliary request is thus clearly allowable in the sense that it is immediately apparent to the board, with little investigative effort on its part, that the amendments made successfully address the issue raised, without giving rise to new ones. In that it removes the issue of added subject-matter it clearly does not extend the framework of discussion.

2.4 For these reasons the board decided to use its discretion under Articles 13(1) and (3) RPBA with Article 114 (2) EPC to admit this request in the proceedings.

3. Added subject-matter - Art 100(c) and 123(2) EPC

3.1 During examination of the application claim 1 has been amended in the preamble, in that the processor is now required to be configured and arranged to independently use information regarding the sensed food components to obtain responsive information from the remote resource instead of to "facilitate obtaining" this information as originally claimed. Furthermore in the characterising portion the sensor has been specified to sense information provided on a coffee pod containing said food component.

3.2 The deletion of the verb "facilitate" in the Board's view does not alter the underlying function as understood from the wording of original claim 1 when read contextually by the skilled person in the light of the description. The processor uses information provided on the coffee pod to be able to receive

"responsive" information, that is information to which the system is responsive, cf. paragraph [0029] of the published application. The sensed information on the pod thus enables or allows downloading the responsive information from a remote server, see again paragraph [0029], and it is in this context that "facilitating obtaining" is to be understood. Nor is anything else taught or otherwise suggested in the parent application. This interpretation corresponds to that of present claim 1 where the information is used to obtain the responsive information. As in original claim 1 present claim 1 still requires that the processor is configured and arranged to use information regarding the sensed food to obtain the responsive information. The application as filed also does not suggest that the processor obtains the responsive information by itself (as inferred by the Respondent by their reading of "facilitate"), as it requires, as the skilled person knows, input/output interfaces and network facilities to address a remote server. Thus no new subject-matter has been added by the deletion of the verb "facilitate".

3.3 Concerning the added feature of the sensor sensing information provided on a coffee pod containing food components, paragraph 13 of the published application as filed explicitly discloses that "the coffee brewing apparatus may communicate with a remote resource regarding other matters than the food components and/or the responsive information" (lines 15-17). "Matter" is to be understood as referring to any information, and is disclosed in the general description of the invention without any further indication of a specific type of sensor. Nor is the type of sensor used to read information on the coffee pod limited to the use of optical or RFID code. Paragraph 19 of the application

as filed cites RFID only as an example, and other types of sensor are also suggested, see the final two sentences ("Other possibilities exist as well. For example, ..."). This is also abundantly clear from paragraph 12, which refers to "any sensor suitable for the task".

3.4 From the above the Board therefore concludes that these amendments comply with the provisions of Art. 123(2) EPC.

4. Sufficiency - Art 100(b) EPC

4.1 The Appellant refers to the inconsistent use of the expression "food component" which according to the claims defines the content of a coffee pod, whereas in in the patent (e.g. paragraph 31, lines 41-44), it refers to the coffee pod containing coffee. This inconsistency would be so severe as to prevent the skilled person from understanding the invention and carrying it out.

4.2 It is established case law that when interpreting a claim, the skilled person should try with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation which is technically sensible and takes into account the whole of the disclosure of a patent, see Case Law of the Boards of Appeal, 8th edition, 2016, (CLBA) II.A.6.1.

4.3 It may well be that due to inconsistent use of terminology claims 1 and 12 are unclear. Lack of clarity is however not a ground of opposition where it concerns the claims as granted as is the case here. However this lack of clarity does not prevent the skilled person from implementing the invention as

defined in claim 1 (or claim 12). When reading the claim and confronted with the somewhat unusual expression of "sens[ing] food components" the skilled person will look towards the description to better understand what is meant. They will understand from the description that this expression does not refer to sensing of the contents of the pod but rather to the pod itself. Thus, the sensor performs the technical function of sensing or reading information provided on a coffee pod, after which the processor in response to this information downloads responsive information from a remote resource via the external network interface. This is for example detailed clearly in paragraphs 18 and 19 of the specification describing reading information from an optical code or tag on the coffee pod. Otherwise there is no suggestion anywhere else in the patent that sensing or analysing of the contents of the pod might have been intended. As regards sensing of the pods, this is unquestionably disclosed in sufficiently clear and complete detail, as is evident from the bar code and RFID tag examples. Nor has it been argued that these examples per se would not be enabling.

4.4 For the above reasons, the Board confirms the conclusion of the opposition division that the patent discloses the subject-matter of claims 1 and 12 in a sufficient manner.

5. Novelty in respect of D14

5.1 D14 has been argued to disclose all the features of claim 1 (as well as the corresponding steps of claim 12). In particular the Appellant submits that D14 discloses a coffee brewing apparatus that comprises means for brewing coffee beverages.

5.2 The Board cannot follow the Appellant's opinion, that D14 directly and unambiguously discloses an apparatus suitable for brewing coffee. Rather, the Board agrees with the Respondent, that in the technical field of coffee makers, brewing coffee is understood to rely on the use of ground coffee beans exposed to hot water for some time. This also corresponds to a definition of the verb brew according to Merriam-Webster online dictionary: "to prepare (a drink or other liquid) by infusion in hot water// brew tea".

5.3 Instead of directly and unambiguously disclosing a coffee machine comprising means also suitable for brewing coffee, D14 broadly relates to systems for dispensing beverages such as a beverage vending machine. On Page 17, paragraph 2 describes the example of powdered drinks contained in a food package equipped with a RFID tag 4 (page 17, last paragraph). The tag can be read by an electronic reader 8 of the dispensing machine 7. According to page 18, second paragraph different types of information are programmed in the RFID and can be sent to host data storage system 6 (last paragraph of page 18).
Specifically, turning to the types of beverages that are prepared, it is common ground that coffee is not explicitly mentioned in the detailed description. The shortcomings that D14 seeks to overcome are listed on page 5, second paragraph or page 7, second paragraph, and relate to the acceptance by the vending machine of low quality coffee, milk powder or concentrate, as well as raw beverage making materials -contained- in the hopper such as coffee, cocoa, milk or soup powder. From these statements it can be inferred that this machine prepares beverages from powder (or liquid) concentrates, also where coffee is concerned. This is

confirmed from the further detailed description of the vending machine according to D14. For example, on page 17, second paragraph, explicit reference is made to a vacuum pack containing a dry powder mix or flexible bag containing a liquid concentrate (last but one sentence). Neither dry powder nor liquid concentrate would be considered suitable for brewing coffee as understood by the skilled person.

5.4 The Appellant further relies on the general description of the background brewing apparatuses in paragraph 2, lines 12 to 15 of the patent itself, which would extend the teaching of the patent also to machines that brew coffee using liquid coffee extract as well as ground coffee.

5.5 That the patent mentions prior art that brews coffee from liquid coffee extract does not change the fact that claims 1 and 12 are directed at brewing coffee. Indeed, this is clear from the further examples cited in paragraph 2 where "the ground coffee beans are loose and are simply deposited into a brewing container" or "when using a pod-based system, ... are provided in a container that is placed within the coffee brewer." The term "brewing" which is well understood in the field is also frequently and consistently used throughout the specification. Since claim 1 also specifies in its characterising portion a sensor able to sense information provided on a coffee pod, the skilled person has no doubts that the claim concerns machines using coffee pods containing ground coffee i.e. "the pod based system" with ground coffee. Therefore the mention of coffee extract does not lead the skilled person to extend the interpretation of a coffee brewing apparatus to mean anything other than apparatus that brews coffee in the usual sense, rather

than diluting by mixing a powder or other coffee concentrate with water (or milk).

5.6 It follows from the above, that D14, because it does not concern brewing coffee but at best preparation of instant type coffee from powder mixed into water (or milk), does not anticipate the coffee brewing apparatus having means for brewing coffee in the sense of claim 1 or 12. Therefore the subject-matter of these claims is novel over D14.

6. Inventive step

6.1 As D14 is not concerned with brewing coffee, the Board does not consider it to be relevant for assessing inventive step. However, even if the skilled person were to start from D14, as proposed by the Appellant, the Board is unconvinced that they would as a matter of obviousness arrive at the subject-matter defined in claim 1 or 12.

6.1.1 The Appellant argues that D14 variously suggests the use of individual servings of the food product in a form of a single serving packet (e.g page 17, last sentence of paragraph 2), and that it would be trivially straightforward to transfer this idea to coffee brewing.

6.1.2 The Board however cannot follow this reasoning, as the disclosure of D14 inherently relies on and its device is specifically configured to use dry powder mix or liquid concentrate allowing simple preparation of a wide variety of different types of beverages by mixing in water or milk. It is not obvious that the skilled person would depart from this multi-purpose powder based preparation scheme, to modify the machine for

brewing pod based coffee. Such a repurposing of the machine goes beyond the normal skills and abilities of the average skilled person. Therefore the modification of the powder based vending machine as a coffee brewing machine using pods would not have been considered by the skilled person without previous knowledge of the claimed subject-matter.

6.2 Inventive step starting from D13

6.2.1 D13 discloses a coffee brewing apparatus. The coffee is placed as a plurality of pouches (individual portions) 51 which can be capsules (paragraph 37) in a packaging container 3 (paragraph 23) that comprises an identifier 4 provided with data A, and the apparatus 2 comprises a reader 14 for reading the data A in said identifier. The data comprised in the identifier includes the type of beverage and thus the composition (see paragraph 30) of the plurality of pouches. The data is processed by a processing unit of the controller 6 to select a preprogrammed brewing process (paragraph 28). The pre-programmed beverage brewing processes of the apparatus may also be updatable via a connection to a public switching network such as the Internet (paragraph 39), therefore D13 also discloses an external network interface exchanging with a remote resource; and an end user interface in form of a display (paragraph 40).

6.2.2 As the reader 14 is configured to read the identifier on the packaging container 3 it is not configured to sense information on an individual portion such as a coffee pod. Since paragraph 39 specifies that the system may update brewing processes from the Internet, and paragraph 40 explains that the display as an end user interface may show the type of beverage according to the data identified by the reader, or display the

status of the brewing process, it is clear that the data on the basis of which brewing is carried out is stored locally. Information retrieved from the Internet to update brewing processes and parameters is thus not in response to sensing of information on the tag. Therefore D13 neither discloses obtaining responsive information from the remote resource as a function of the information sensed on a coffee pod, nor displaying such responsive information.

6.2.3 Obtaining information from a remote server as a function of information sensed on an individual coffee pod *inter alia* allows various additional parameters and other information to be taken into account in the brewing process, see specification paragraph 21, and communicate them to the end user, so effectively enhancing the brewing process and keeping the user informed. The objective technical problem can be formulated accordingly.

6.2.4 The Appellant considers that the skilled person using his common general knowledge would have arrived at the solution in an obvious way. The skilled person would have no difficulty to consider the provision of an identifier on each individual pouch to increase accuracy. Furthermore D13 already comprises the necessary network communication means and display. The skilled person would also find it obvious to use that display to present information that the brewing process has been updated.

6.2.5 Even if the skilled person were to consider as a matter of obviousness providing information on individual portions, the Board sees no compelling reason why they would then also in response to sensing such individualized information then obtain responsive

information from the a remote resource. The possibility of updating locally stored, preprogrammed brewing processes from the Internet mentioned in paragraph 39, e.g. because of the introduction of new beverage types, does not appear to be linked to any ongoing, individual brewing process, much less that it is initiated by the sensing of an individual code on a pod. This is so because the D13 machine operates autonomously with local storage of the preprogrammed brewing processes. At best they may need to be updated as new products become available, but this can be managed by updating at regular intervals unrelated to individual beverage preparation.

6.2.6 The Board is further unconvinced that the skilled person, starting from what in D13 is effectively a domestic coffee making machine, would as a matter of obviousness look towards beverage vending machines such as disclosed in D14 or D16. The skilled person is an engineer involved in the design and development of domestic coffee brewers, in this case those using pods or capsules. They would not therefore be familiar with vending machine technology, or the techniques known in that context to centrally manage a plurality of drinks selling machines, by providing preparation parameters, monitoring stock and usage or communicating product recalls (D14, D16).

6.2.7 Finally, D11 discloses the use of bar codes or RFID tags on individual cartridges which represent operational parameters that are stored locally, cf. paragraph 120. This is similar to D13. However there is no suggestion in D11 of any sort of Internet connectivity, let alone that in response to sensing of the bar code/RFID tag the device would obtain responsive information from a remote source. Thus, D11

does not offer the claimed solution, so that combination of D13 with D11 would not lead to the claimed invention.

6.3 The Board concludes, therefore, that, considering the different combinations submitted by the appellant of D14 with the skilled person knowledge or D13 with any one of D14,D16 or D11 the subject-matter of claim 1 of the main request involves an inventive step within the meaning of Article 56 EPC. This conclusion also holds for the subject-matter of the method claim 12 that comprises the corresponding steps of operating the brewing apparatus.

7. In conclusion claims 1 and 12 as amended according to the new main request are found to meet the requirements of the EPC. The Board is also satisfied that the consequential amendments of the description to adapt it to the the amended claim comply with Article 123(2) EPC. It thus finds that, considering the amendments made to the patent according to the new main request, the patent and the invention to which it relates meet the requirements of the EPC, and that therefore the patent can be maintained as amended, Art 101(3)(a) EPC.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**

2. **The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:**

   - Claims: Claims 1 to 17 of the main request filed during oral proceedings of 7 May 2019.

   - Description: Pages 2 to 7 filed during oral proceedings of 7 May 2019.

   - Drawings: Figures 1 to 3 of the published patent specification.

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated