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**Datasheet for the decision  
of 29 September 2021**

**Case Number:** T 1485/18 - 3.2.07

**Application Number:** 12843677.1

**Publication Number:** 2650234

**IPC:** B65D85/804

**Language of the proceedings:** EN

**Title of invention:**

SINGLE MEASURE CAPSULE FOR ESPRESSO COFFEE MACHINES

**Patent Proprietor:**

Inventos para Sistemas Vending, S.L.

**Opponent:**

ING. C. CORRADINI & C. S.R.L.

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - main request (no) - auxiliary request (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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**Case Number: T 1485/18 - 3.2.07**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 29 September 2021**

**Appellant:** Inventos para Sistemas Vending, S.L.  
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**Representative:** Carpintero Lopez, Francisco  
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**Respondent:** ING. C. CORRADINI & C. S.R.L.  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted on 23 May 2018  
revoking European patent No. 2650234 pursuant to  
Article 101(3) (b) EPC.

**Composition of the Board:**

<b>Chairman</b>	I. Beckedorf
<b>Members:</b>	S. Watson
	A. Cano Palmero

## **Summary of Facts and Submissions**

- I. The patent proprietor lodged an appeal in the prescribed form and within the prescribed time limit against the decision of the opposition division to revoke European patent number 2 650 234.
- II. The opposition was based on Article 100(a) EPC pursuant to novelty and inventive step and was directed to the patent as a whole. As far as a second opposition had been filed, this opposition was withdrawn during the proceedings before the opposition division, prior to the decision under appeal being taken.
- III. The opposition division found that the subject-matter of claim 1 in amended form, according to the main request and to the auxiliary request, did not involve an inventive step (Articles 100(a) and 56 EPC).
- IV. To prepare for oral proceedings scheduled at the request of both parties, the Board gave its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA 2020. The Board indicated that the requests of the patent proprietor were not clear and the subject-matter of claim 1 of the main and auxiliary requests, as decided upon by the opposition division, appeared to lack an inventive step.
- V. The patent proprietor clarified its requests with letter of 28 April 2021.
- VI. Neither the patent proprietor nor the opponent responded to the preliminary opinion of the Board with

respect to inventive step of the subject-matter of claim 1 of either request.

VII. Oral proceedings were held before the Board on 29 September 2021, at the end of which the decision was announced. For further details of the oral proceedings reference is made to the minutes thereof.

VIII. The patent proprietor (appellant) requests that the decision under appeal be set aside and that the patent be maintained in amended form according to the set of claims according to the main request, filed with letter of 22 December 2016, or the auxiliary request, filed with letter of 5 February 2018, both decided on in the decision under appeal.

IX. The opponent (respondent) requests that the appeal be dismissed.

X. In this decision reference is made to the following documents:

D1: WO 2009/133134 A1;  
D9: WO 2010/137946 A1;  
D15: ES 2 234 445 B1.

XI. The lines of argument of the parties are dealt with in detail in the reasons for the decision.

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

"Single-serve capsule for espresso coffee machines which is made of an injected plastic material and has a general frustoconical shape, comprising a smaller bottom or base and a larger open base for filling the capsule with ground coffee, provided with a circumferential flange (2) which is closed

with a first sealing cover (5) once the capsule is filled, the smaller bottom or base having a perimetral supporting foot (3) and a central area (4) sunken towards the inside of the capsule such that a hollow (9) is established between the support plane of the capsule and the central area (4), said central area (4) having a plurality of uniformly distributed perforations, characterized in that the hollow (9) is closed in a leak-tight manner with a second removable sealing cover (6), and wherein an inner hollow area (7) useful for filling the capsule with coffee is formed between the perimetral supporting foot (3) and the perforated central area (4).

XIII. Claim 1 of the auxiliary request differs from the main request through the introduction of the following features at the end of the claim:

"...and wherein the face of the circumferential flange (2) opposite the machine coupling face has a circumferential end finishing (2b) and circumferential teeth (2c) providing said flange with rigidity and flexibility for an optimum leak-tight coupling to the machine in the supply phase."

## **Reasons for the Decision**

### *Main request - inventive step - claim 1*

1. The opposition division found that the subject-matter of claim 1 of the main request was not inventive over a combination of the teachings of documents D1 and D15 (see decision under appeal, page 7, last paragraph and page 8, first, second and fourth paragraphs).

The opposition division reasoned:

- (a) that the distinguishing feature of the subject-matter of claim 1 in comparison to the disclosure of document D1 was "the fact that the capsule has a removable cover";
- (b) that the objective problem to be solved was the provision of a capsule "which has the flexibility of being used in different machines";
- (c) that document D15 disclosed "the removal of the cover on the injection side (3) to allow the capsule to be used by automatic machines (column 5, lines 16-32; figure 5)".

1.1 The appellant contested the opposition division's findings and argued firstly that document D15 did not show a removable lower cover; and secondly that it would not be obvious for the skilled person to combine the cover of D15 with the disclosure of D1.

1.2 In its statement of grounds of appeal, paragraph bridging pages 1 and 2, the appellant argued that the passage of D15 cited by the opposition division did not disclose a lug on the lower cover (3). According to the appellant, none of the figures of D15 showed a lug on the flexible lower lid (3) and the provision of such a lug would be contrary to the general teaching of document D15 that the lower lid is perforated by an internal protrusion (8) of the capsule.

The Board, however, agrees with the respondent (see reply to the statement of grounds of appeal, point 1.2.1) that as the sentence which describes the lower cover having a lug (column 5, lines 20-22) directly follows the two sentences explaining that the lug on the upper cover facilitates manual opening and allows



the capsule to be used in semi-automatic machines, the purpose and position of the lug is clearly disclosed to the skilled person.

The Board also agrees with the respondent that there does not appear to be a contradiction between this disclosure and the general teaching of D15. The passage in column 5, lines 18-20, discloses that generally the cover (2) will not have a lug, but if the capsule is to be used in semi-automatic machines (rather than automatic machines), then it is useful to have a lug to facilitate manual opening. D15 also clearly states that the lower cover may also have such a lug. The skilled person therefore understands these embodiments as describing particular variations of the capsule, where one or both of the sealing covers are manually removable, depending on the circumstances, e.g. when using particular types of semi-automatic machines.

- 1.3 The appellant has further argued (statement of grounds of appeal, page 2, third complete paragraph) that the skilled person would not combine the teaching of D15 with the capsule of D1 as manual opening of the capsules is not foreseen in D1.

Whilst the Board agrees with the appellant, that document D1 describes a capsule being used in machines having dedicated opening means, it does not see any contradiction in the teaching of document D1 that a cover can be provided which allows the capsule of D1 to be used more universally, as suggested by document D15.

The Board agrees with the respondent (reply to the statement of grounds of appeal, page 5, last paragraph) that D15 provides the clear suggestion to provide covers with a lug for easy manual removal so that a capsule may also be used in a semi-automatic machine.

Thus D15 discloses the solution to the objective technical problem posed by the opposition division and also indicates to the skilled person why this solution should be used.

- 1.4 Therefore the Board agrees with the findings of the opposition division that the subject-matter of claim 1 according to the main request is obvious with respect to a combination of the teachings of documents D1 and D15.

*Auxiliary request - inventive step - claim 1*

2. The opposition division found that the subject-matter of claim 1 of auxiliary request 1 was not inventive with respect to a combination of the teachings of the documents D1, D15 and D9 (see contested decision, point 11, paragraph bridging pages 9 and 10). Using a partial problem approach, the opposition division found that the first partial problem, namely to provide a capsule which can be used in different machines, was solved by the teaching of D15 (as for the main request) and the second partial problem, namely to provide improved sealing of the capsule, was solved by the teaching of document D9 (in particular figures 8a and 8b (reference signs 28.1, 28.2, 28.3, 28.4)).
- 2.1 The appellant contested this finding (see pages 2 to 3 of the statement of grounds of appeal) and argued that the "figures of D9 show the some teeth, but not a circumferential end finishing (2b)".
- 2.2 The respondent (see reply to the statement of grounds of appeal, point 2.) argued that the term "a circumferential end finishing" had to be interpreted as broadly as possible and could be construed as any

circumferential edge that delimits the face of the flange, thus document D1 necessarily showed circumferential end finishing. During oral proceedings the respondent argued explicitly that figure 3 of document D1 shows a circumferential end finishing. Thus, according to the respondent, the second distinguishing feature related only to the "circumferential teeth" on the face of the circumferential flange opposite the machine coupling face.

- 2.3 It was not disputed by the appellant that circumferential teeth were disclosed in figure 8a of document D9.

However, the appellant brought forward the argument during oral proceedings before the Board, that neither document D1 nor figure 8a of document D9 disclosed circumferential end finishing as this feature had to be a feature discernible in the capsule. Although the embodiment of figure 11 of document D9 could be understood as showing a circumferential end finishing, this embodiment did not include circumferential teeth so that the subject-matter of claim 1 of the main request could not be considered obvious over the combination of the teaching of document D1 with that shown in the embodiment of figure 11 of document D9. According to the appellant, to arrive at the claimed subject-matter the skilled person would need to combine the teachings of document D1 with two different embodiments of document D9 (shown in figures 8a and 11), this would not be obvious for the skilled person without knowledge of the invention.

- 2.4 The Board however agrees with the respondent, that the feature "circumferential end finishing" has to be

interpreted broadly. The appellant has not provided any evidence that this term has a generally recognised restrictive technical meaning for the skilled person and the Board is not aware of any such meaning.

The only mention in the description of this term is found in paragraph [0016] of the patent as granted and reads as follows:

"The circumferential flange (2) has a circumferential end finishing (2b) and circumferential teeth (2c) providing said flange with rigidity and flexibility for an optimum leak-tight coupling to the machine in the supply phase."

This disclosure is identical to the wording of claim 3 as granted on which claim 1 of the auxiliary request is based (the granted claims being identical to the claims as originally filed). As argued by the respondent, this passage does not provide any details about the form or function of a "circumferential end finishing".

In the absence of a more restrictive definition, the Board considers that figure 3 of document D1 has to be understood as anticipating a circumferential end finishing in the sense of claim 1 according to the auxiliary request.

- 2.5 Therefore the Board agrees with the findings of the opposition division that the subject-matter of claim 1 of the auxiliary request is obvious with respect to a combination of the teaching of D1 with the teaching of document D15 (for the feature a "removable" sealing cover) and the teaching of document D9 (for the feature "circumferential teeth providing said flange with rigidity and flexibility for an optimum leak-tight coupling to the machine in the supply phase").

*Conclusion*

3. For the above reasons, the appellant has not convincingly shown that the findings of the contested decision are incorrect with respect to either the main or the auxiliary request.
4. As neither request is allowable, the appeal must be dismissed.

**Order**

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

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated