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**Datasheet for the decision  
of 31 May 2021**

**Case Number:** T 2008/18 - 3.2.04

**Application Number:** 11184078.1

**Publication Number:** 2578119

**IPC:** A47J31/40, A47J31/60, A23G9/04,  
A23G9/30

**Language of the proceedings:** EN

**Title of invention:**

Beverage production machine and method

**Patent Proprietor:**

Société des Produits Nestlé S.A.

**Opponent:**

Koninklijke Douwe Egberts B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 123(2)

RPBA Art. 12(4)

**Keyword:**

Inventive step - main request (no) - auxiliary request (yes)  
Amendments - allowable (yes)  
Late-filed evidence - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number: T 2008/18 - 3.2.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 31 May 2021**

**Appellant:** Société des Produits Nestlé S.A.  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 June 2018 concerning maintenance of the  
European Patent No. 2578119 in amended form.

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
C. Heath

## **Summary of Facts and Submissions**

- I. The appellant-proprietor lodged an appeal, received on 1 August 2018, against the interlocutory decision of the opposition division posted on 29 June 2018 concerning maintenance of the European Patent No. 2578119 in amended form, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 26 October 2018.

The appellant-opponent also appealed the interlocutory decision by notice of appeal received on 31 August 2018 and paid the appeal fee on the same day. The statement setting out the grounds of appeal was received on 9 November 2018.

- II. Opposition was filed under the ground of Article 100(a) EPC for lack of inventive step.

The opposition division held that granted claim 1 lacks an inventive step having regard inter-alia to the following evidence:

A1 US 6,705,106 B1  
A5 WO 2008/004144 A2  
A17 WO 2006/066338 A1

- III. The appellant-opponent filed the following further evidence with the statement of grounds:

A26 WO 2011/031144 A2  
A27 US 2002/0113850 A1

- IV. The appellant-proprietor requests that the decision under appeal be set aside and that the patent be upheld

as granted (main request), or that the opponent's appeal be dismissed (auxiliary request 1), or that the patent be upheld based on auxiliary Requests 2 - 8, all filed or re-filed with letter dated 30 July 2019, auxiliary Requests 6 and 8 having been newly filed, while 2 - 5 and 7 had been filed with the grounds of appeal.

The appellant-opponent requests cancellation of the decision under appeal and revocation of the patent.

- V. In preparation for oral proceedings the board issued a communication, dated 18 September 2020, setting out its provisional opinion on the relevant issues.

Oral proceedings before the board were duly held as a videoconference on 31 May 2021 in the absence of the appellant-opponent, who had announced with letter of 26 March 2021 that they would not attend.

- VI. The wording of independent claim 1 of the requests relevant to this decision is as follows:

(a) Main request (patent as granted)

"Beverage production machine (1) comprising a removable reservoir (2) for holding a product; cooling means (5) for cooling the product; dispensing means (3) connected to the reservoir (2) for dispensing a portion of the product; an RFID reader (4) for receiving data that comprises identification information and shelf-life information of the product; control means (7) for identifying the product based on the identification information and for setting a value of a shelf-life counter (8) according to the shelf-life information;

wherein the beverage production machine (1) is operable in a product mode to dispense a portion of the product, if the control means (7) have identified the product and if the value of the shelf-life counter (8) is above a first threshold value;

wherein the control means (7) are adapted to continuously decrease the value of the shelf-life counter (8) in the product mode;

wherein the beverage production machine (1) further comprises a display (20);

wherein the display (20) has a shelf-life indicator (21) for displaying the value of the shelf-life counter (8); and

wherein the display (20) has an alarm indicator (23) for issuing a first warning signal, if the shelf-life counter value (8) is below a second threshold value."

(b) Auxiliary request 1 (patent as upheld in amended form in the decision under appeal)

Claim 1 as in the main request with the following features added at the end of the claim (emphasis added by the board to indicate added or removed features):

"... wherein the beverage production machine (1) further comprises a display (20);

wherein the display (20) has a shelf-life indicator (21) for displaying the value of the shelf-life counter(8); ~~and~~

wherein the display (20) has an alarm indicator (23) for issuing a first warning signal, if the shelf-life counter value (8) is below a second threshold value,

wherein the reservoir (2) has an opening (10) and a lockable lid (11) for exposing or covering the opening wherein the control means (7) are adapted to detect and control the lock state of the lid (11);

wherein the display (20) has a lid indicator (24) for indicating whether the lid is locked or unlocked, and wherein the control means are adapted to unlock the lid (11) for refilling the product in the product mode, if the product to be refilled is identified based on identification information in further data received by the RFID reader (4)."

VII. The appellant-proprietor argued as follows:

The subject-matter of claim 1 is inventive over the cited prior art. Claim 1 of auxiliary request 1 is a combination of originally filed claims and does not therefore contain added subject-matter. Late filed documents A26 and A27 are not admissible, Article 12(4) RPBA 2007. The subject-matter of claim 1 of auxiliary request 1 involves an inventive step over the cited prior art also taking into account the common general knowledge of the person skilled in the art.

VIII. The appellant-opponent argued as follows:

Claim 1 of the granted patent lacks an inventive step over the combination of teachings of A5 and A1, as held by the opposition division. The auxiliary request 1 contains added subject-matter in the form of an unallowable intermediate generalisation since claim 1 includes features extracted in isolation from a set of features of an embodiment of the description. Its subject-matter also lacks an inventive step starting from A5 in combination with A1 and either A26, A27 or common general knowledge as exemplified by publication A17.

## Reasons for the Decision

1. The appeals are admissible.

2. Background

The invention relates to a beverage production machine and method, where the beverage production machine can obtain identification information and shelf-life information of a product retained in a removable container through an RFID reader, where the control means can monitor the shelf-life of the product in order to improve the hygiene of the delivered beverage, see specification paragraph [0001] and claim 1.

3. Main request - Inventive step

3.1 The appellant-proprietor contests the findings of lack of inventive step of claim 1 of the opposition division starting from the beverage dispensing device of A5, see points 2.7-2.26 of the impugned decision.

3.2 As noted by the board in its written communication in this connection,

*"5.1 The term "shelf-life time of a product" of claim 1 in its normal usage is an indication of the time that the product keeps an adequate degree of freshness for the consumer. For chilled products, as those of A5, it also depends on the storage temperature. Thus, the indication of a degree of freshness and its expiration anticipates the claimed shelf-life and shelf-life counter.*

*The claim also requires receiving "data that comprises ... shelf-life information of the product".*



*Shelf-life information in its broad sense is any information related to the shelf-life of the product. It thus includes for instance the date of filling of the beverage container that is used for calculating the end of the shelf-life or freshness of the contained product.*

*As regards the feature of the product mode, while granted claim 1 requires that the machine "is operable in a product mode to dispense a portion of the product ... if the value of the shelf life-counter is above a first threshold value", it does not exclude that the machine can also dispense the product in a further different mode (e.g. at the first threshold value or below).*

*Also, in the board's understanding, the claimed continuous decrease of the counter does not exclude a stepwise continuous decrease.*

*5.2 Turning to the closest prior art A5, A5 discloses a RFID reader, see A5, page 5, lines 7-10, for obtaining "the necessary information with respect to date of filling of the beverage container", i.e. shelf-life information of the product. The user may also identify the type of product (type of beer) via a data input unit, see page 14, lines 29-30. The control means of the known machine also sets a value of a shelf-life counter, freshness-value (see table I on pages 11-12), according inter alia to the received information, see page 4, line 31 to page 5, line 10 and page 9, lines 3-6. The resulting data may be displayed in its simplest form by means of colours: green for fresh and red for expired, see page 7, lines 4-6. Thus, the green colour is displayed if the freshness-value is above 0, which represents a first threshold value. This*

*anticipates the product mode as defined by the contested claim since while the green colour is displayed, the control system has also identified the product through the user data input and the machine is operable to dispense the product. The display of the known machine also issues a warning signal (red light) if the freshness value (shelf-life counter) is below 1 (second threshold value), see value for expiry date on table I, page 12.*

*5.3 The claimed machine differs therefore from the one described in A5 in that the RFID reader can also receive data comprising identification information and the control means can identify the product based on that information. The data input operation is thus automated. The corresponding technical problem can be formulated as how to further automate the data input of the known beverage machine.*

*Document A1, is also concerned with using RFID for automatic input of supply container related data, see column 3, lines 51-62. The skilled person seeking to solve the above problem would thus regard the teachings of A1 as very relevant. A1 teaches in particular that the RFID reader can also be used for receiving identification information of the product in an automatic manner, see column 4, lines 56-60. The skilled person would consequently regard the use of this possibility in the machine of A5 as a matter of obviousness when seeking to further automate the known machine.*

*5.4 The subject-matter of claim 1 appears thus to lack an inventive step."*

3.3 During the oral proceedings, the appellant-proprietor refrained from further comment. They merely referred to their written submissions including their response of 29 April 2021 to the board's communication. The board is however not convinced by these submissions of the appellant-opponent for the reasons below:

3.3.1 In their response, the appellant-opponent maintains that the claimed product mode implicitly requires to dispense the product *only* if it has been identified by the control means and if the shelf-life counter is above the first threshold, thus implying that dispensing is prevented or blocked when either condition is not met. This would not be disclosed by A5. They also refer to paragraph [0012] of the patent for the interpretation of this claimed feature.

However, it cannot be inferred from the wording of the claim that the machine *only*, meaning exclusively, dispenses the beverage in the defined product mode. Nor does claim 1 call for blocking or preventing dispensing in case that any condition of the product mode is not met. On the contrary, as explained in the written preliminary opinion of the board, the wording of the claim is clear in this respect and does not exclude dispensing in other modes where one or both conditions are not met. While it is true that in paragraph [0012] it is described that the machine can prevent accidental or intentional use of an incorrectly identified or an expired product, this limitation is not included in the claim. As variously stated in case law, the description cannot be used to give a different meaning to a claim feature which in itself imparts a clear, credible technical teaching to the skilled reader, see Case Law of the Boards of Appeal, 9 edition 2019 (CLBA), II.A. 6.3.4. The board is thus not convinced that the wording

of claim 1 implicitly requires blocking or preventing dispensing if one of the above conditions is not met. Thus this additional negative restriction is not part of the claimed subject-matter. It is thus not relevant that A5 does not disclose it.

3.3.2 The appellant-proprietor also maintains that A5 discloses a stepwise decrease of the freshness indicator, whereas the claim requires that the "control means is adapted to continuously decrease the value of the shelf life counter". Paragraph [0057] of the contested patent explains how shelf-life information is stored and counted as a number of remaining days, weeks or months i.e. as an integer value, as is also apparent from the 3 digit numeral shown at the corresponding reference sign 21 in figure 2. Thus, it would seem that the patent itself understands "continuously decreasing" as encompassing reducing integer values. This is the same as in A5, where, see table I, page 11, left hand column, the number of days to expiry date is counted down, and then visualized using an "actual freshness" value on a scale of 0 to 10. The board thus holds that the continuous decrease of the actual freshness indicator of A5 anticipates the claimed continuous decrease of the value of the shelf-life counter.

3.4 Thus, none of the further appellant-opponent's further submissions convince the board to change its point of view as put forward in its written preliminary opinion. It therefore confirms the conclusion of the opposition division that the subject-matter of granted claim 1 lacks an inventive step.

4. Auxiliary request 1 - Added subject-matter

As stated in the board's communication, section 6, *"Claim 1 of auxiliary request 1 does not contain added subject-matter beyond the contents of the original application. Indeed, it is a direct combination of original claims 1, 2, 4 and 12, and as such explicitly originally disclosed."*

In their subsequent submission of 31 March 2021, penultimate paragraph on page 2, the appellant opponent takes issue with the fact that the description only mentions the features of original claims 4 and 12 together with other features not included. However, whether this is so or not cannot detract from the fact that that combination was originally disclosed in isolation from those other features, namely in the original claims.

The board concludes that the amendments to claim 1 as upheld do not add subject-matter, Art 123(2) EPC.

5. Admissibility of documents A26, A27

5.1 As noted by the board in its written preliminary opinion:

*"7. Admissibility of documents A26, A27*

*These new documents, cited for inventive step of present auxiliary request 1, do not appear to be admissible to the board, Article 12(4) RPBA 2007 in combination with Article 25(2) RPBA 2020.*

*There is no clear justification for their late filing. Claim 1 of auxiliary request 1 was granted subject-matter. The proprietor further made explicitly clear by filing it as auxiliary request 3 with their reply of 5*

*December 2016 to the notice of opposition, more than one year before the first instance oral proceedings held on 15 March 2018, that they were pursuing maintenance of the patent in this form as a fallback position. The opponent has therefore had ample opportunity in the opposition proceedings to respond to this position by for example filing further relevant documents.*

*Moreover, neither document appears to teach the claimed feature that the display has a lid indicator for indicating whether the lid is locked or unlocked. It appears thus prima facie that either combination with the closest prior art document A5 would not result in the subject-matter of claim 1."*

5.2 The appellant-opponent refrained from further comment in their written response of 31 March 2021, after issuance of the board's communication. Absent any further submissions, the board sees no reason to change its point of view. It thus decided not to admit documents A26 and A27 into the proceedings.

6. Auxiliary request 1 - Inventive step

6.1 As noted by the board in its written communication:

*"8. First auxiliary request - Inventive step*

*The features added to claim 1 of this request are that the removable reservoir is provided with a lockable lid, and the machine with control means to detect and control the lock state of the lid adapted to unlock the lid of the removable reservoir for refilling if the product is identified using further data received by the RFID reader, the machine display having a lid*

*indicator for indicating whether the lid is locked or unlocked.*

*Inventive step of these added features is also challenged starting from A5 in combination with common general knowledge. The appellant-opponent however submits no evidence that the provision of such features in a replaceable reservoir and dispenser machine of the type of A5 for chilled beverages, such as beer, is known from common general knowledge.*

*Absent any further argument regarding these further features, which are not per se trivial, the board at present has no reason to question inventive step."*

- 6.2 The appellant-opponent in their written response of 31 March 2021, bridging paragraph of pages 2 and 3, maintains that the use of a lockable lid, lid indicator and control means for detecting a lock state would be well known to the skilled person as also the fact, that the use of such a controllable lid is suitable to counteract any contamination entering a replaceable reservoir. However, they still fail to submit any evidence that the use of these features in combination is known or suggested by common general knowledge in the context of beverage dispensing machines, as is the machine of A5. In particular they submit no evidence that the use of a controllable lid in combination with a machine control and lid indicator display in a beverage dispensing device would be known or suggested by common general knowledge. Further, patent publication A17 also cited in the statement of grounds does not mention any lockable or controllable lid or a lid indicator.

6.3 In the board's view, the above differences vis-a-vis A5, which are applied in the present context "in order to improve hygiene and to protect the product" (decision under appeal, point 2.32), are not trivial and thus go beyond the routine skills of the skilled person. Absent any evidence to the contrary, the board can but confirm the conclusion of the opposition division (point 2.31-2.34) that the subject-matter of claim 1 of the first auxiliary request involves an inventive step in the sense of Article 56 EPC.

7. As the arguments of both appellants against the findings of the opposition division fail to convince, the board upholds the opposition division's decision and dismisses both appeals.

## **Order**

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

**Both appeals are dismissed.**

The Registrar:

The Chairman:



N. Schneider

A. de Vries

Decision electronically authenticated