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**Datasheet for the decision  
of 4 July 2022**

**Case Number:** T 1966/19 - 3.4.03

**Application Number:** 13197778.7

**Publication Number:** 2728559

**IPC:** G07F9/02, G07F13/06

**Language of the proceedings:** EN

**Title of invention:**

Control unit for controlling an automatic device for preparing beverages

**Applicant:**

Koninklijke Douwe Egberts B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 52(1), 56, 123(2)  
RPBA Art. 12(4)

**Keyword:**

Main request - request could have been filed in first instance proceedings (yes) - admitted (no)

First auxiliary request - mixture of technical and non-technical features - inventive step (no)

Second and third auxiliary requests - amendments - extension beyond the content of the application as filed (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1966/19 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 4 July 2022**

**Appellant:** Koninklijke Douwe Egberts B.V.  
(Applicant) Vleutensevaart 35  
3532 AD Utrecht (NL)

**Representative:** V.O.  
P.O. Box 87930  
2508 DH Den Haag (NL)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 12 February  
2019 refusing European patent application No.  
13197778.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** T. Häusser  
**Members:** J. Thomas  
L. Basterreix

## **Summary of Facts and Submissions**

I. The appeal is against the examining division's decision refusing European patent application No. 13 197 778 on the grounds that

- the subject-matter defined in the then main request and auxiliary request did not involve an inventive step and
- the subject-matter defined in the then auxiliary request contained subject-matter extending beyond the content of the application as filed.

II. At the oral proceedings held before the Board the appellant confirmed its pending requests that the decision under appeal be set aside and that a patent be granted according to the set of claims of the main request or one of the first to third auxiliary requests, all filed with the statement setting out the grounds of appeal on 12 June 2019.

III. The following document is referred to in the following:  
D1: WO 2007/003062 A1

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

*A control unit (2) for an automatic device (1) for preparing a beverage, which control unit (2) is provided with a display panel (3) and an input means (4) which enables a user by means of designations of selection fields displayed as image elements on the display panel to choose from a plurality of formulations a formulation for the beverage to be prepared, wherein the control unit is provided furthermore with an operating unit (5) for displaying by means of the display panel (3) a visually observable*

*reaction to designations provided by the user, and for controlling a preparation unit (6) of the automatic device, with an operating condition in which the display panel has mutually hierarchically interrelated selection fields which are representative of a formulation of the beverage to be prepared, with at least one selection field of a first, highest, level and at least two selection fields of a second, lower, level, wherein each lower ranked selection field is representative of a further specification of the formulation specified by the associated higher ranked selection field, and wherein the display panel after designation of a selection field displays the designated selection field's directly lower ranked selection fields associated with the designated selection field, characterized in that the display panel after designation of a selection field continues to display the associated higher level selection fields as well.*

V. Claim 1 of the first auxiliary request reads as follows:

*A control unit (2) for an automatic device (1) for preparing a beverage, which control unit (2) is provided with a display panel (3) and an input means (4) which enables a user by means of designations of selection fields displayed as image elements on the display panel to choose from a plurality of formulations a formulation for the beverage to be prepared, wherein the control unit is provided furthermore with an operating unit (5) for displaying by means of the display panel (3) a visually observable reaction to designations provided by the user, and for controlling a preparation unit (6) of the automatic device, with an operating condition in which the*

*display panel has mutually hierarchically interrelated selection fields which are representative of a formulation of the beverage to be prepared, with at least one selection field of a first, highest, level and at least two selection fields of a second, lower, level, wherein each lower ranked selection field is representative of a further specification of the formulation specified by the associated higher ranked selection field, and wherein the display panel after designation of a selection field displays the designated selection field's directly lower ranked selection fields associated with the designated selection field, characterized in that the display panel after designation of a selection field continues to display the associated higher level selection fields as well, therewith expanding the depicted image further after each selection until a final composition has been reached.*

VI. Claim 1 of the second auxiliary request reads as follows:

*A control unit (2) for an automatic device (1) for preparing a beverage, which control unit (2) is provided with a display panel (3) and an input means (4) which enables a user by means of designations of selection fields (8; 81, 82, 83; 833) represented by image elements (8A; 81A, 82A, 83A; 833A) shown on the display panel to choose from a plurality of formulations a formulation for the beverage to be prepared, wherein the control unit is provided furthermore with an operating unit (5) for displaying by means of the display panel (3) a visually observable reaction to designations provided by the user, and for controlling a preparation unit (6) of the automatic device, with an operating condition in which the*

*display panel has mutually hierarchically interrelated selection fields which are representative of a formulation of the beverage to be prepared, with at least one selection field of a first, highest, level and at least two selection fields of a second, lower, level, wherein each lower ranked selection field is representative of a further specification of the formulation specified by the associated higher ranked selection field, and wherein the control unit after designation of a selection field causes the display panel to represent the directly lower ranked selection fields associated with the designated selection field by their corresponding image element, and enables the user to designate said directly lower ranked selection fields, characterized in that the control unit causes the display panel after designation of the selection field to continue the representation of the associated higher level selection fields of the directly lower ranked selection fields as well and to continue enabling the user to designate said associated higher level selection fields.*

VII. Claim 1 of the third auxiliary request reads as follows:

*A control unit (2) for an automatic device (1) for preparing a beverage, which control unit (2) is provided with a display panel (3) and an input means (4) which enables a user by means of designations of selection fields displayed as image elements on the display panel to choose from a plurality of formulations a formulation for the beverage to be prepared, wherein the control unit is provided furthermore with an operating unit (5) for displaying by means of the display panel (3) a visually observable reaction to designations provided by the user, and for*

*controlling a preparation unit (6) of the automatic device, with an operating condition in which the display panel has mutually hierarchically interrelated selection fields which are representative of a formulation of the beverage to be prepared, with at least one selection field of a first, highest, level and at least two selection fields of a second, lower, level, wherein each lower ranked selection field is representative of a further specification of the formulation specified by the associated higher ranked selection field, and wherein the display panel after designation of a selection field from a set of two or more designatable selection fields, with a common directly higher level selection field, displays the designated selection field's directly lower ranked selection fields associated with the designated selection field, therewith enabling the user to designate one of said directly lower ranked selection fields, characterized in that the display panel after said designation of a selection field continues to display the higher level selection fields, associated with the designated selection field as well, and therewith enables the user to designate another selection field from the set of two or more designatable selection fields by designating the associated common directly higher level selection field of the set of two or more designatable selection fields and subsequently selecting the another selection field.*

VIII. The appellant's arguments, insofar as they are relevant to the present decision, can be summarised as follows:

The main request should be admitted into the proceedings since the previous wording of an image element could be misunderstood. The amendments



concerned only the wording of claim 1 which was amended to be more precisely formulated.

The first auxiliary request should be considered inventive, since when starting from document D1 as closest prior art, no hint was given to the skilled person to present the whole selection tree on the display instead of presenting only the next possible choice (see Figures 3A, 3B, 4A to 4C and 6A to 6C of document D1). Thus, the presentation of the whole selection tree on the display kept the user informed about its choice and made changes to the selected beverage easier.

The second and third auxiliary requests did not contain subject-matter extending beyond the content of the application as filed, because the disclosure of the embodiment shown in Figures 9A to 9C taught the reader to go back to whatever higher level previous selection, within the selection fields as also shown in Figure 10 and disclosed in the corresponding passages of the description. Moreover, the overall teaching of the application as a whole provided sufficient basis for the selection of whatever higher selection fields during the course of the selection process. Hence, an unallowable intermediate generalisation could not legitimately be argued.

## **Reasons for the Decision**

### **1. The claimed invention**

#### 1.1 Inventive concept

The application is about a control unit for an automatic beverage preparing device with a display panel realised by a touch screen. The beverage can be composed by the user according to a stepwise selection of possible ingredients. Starting at a highest hierarchical level related to a basic beverage selection, e.g. coffee, tea, hot water, hot chocolate, the user can adjust the beverage according to its own preferences through different lower hierarchical levels wherein the lower hierarchical levels relate to different additional ingredients (e.g. sugar, flavour, beverage strength). The invention allows to display the whole selection tree in order to keep the user informed about its selection and eventually change its selection.

## 1.2 Construction of the term "selection field"

The description does not explicitly provide a specific definition of the term "selection field". In the Board's view, a "selection field" is a specific field on the display which can be activated for being touch sensitive. If activated, it reacts to touches and thus enables its selection. However, it can also be deactivated so that the device does not react when the shown selection field is touched. Therefore, the "selection field" can be selectable, but the conditions when it is selectable are not specified in the description and can only be concluded from the overall teaching of the application. One embodiment including activation of the selection fields is shown in Figures 9A to 9C. The enabled selection fields are shown as rectangles with bold lines compared to the disabled and hidden selection fields which are shown as rectangles with dotted lines (Figures 9A to 9C). A selection field can also be displayed on the touch screen without being

enabled, i.e. without being touch sensitive, in order to indicate possible selections to the user (see the description, page 25, lines 11 to 17). Hence, all selection fields presented on the touch screen which might be selectable at a specific moment during a selection process fall under the wording of "selection fields" independently if they are enabled or disabled for selection. In the light of the application as a whole the term "selection field" should therefore not be understood such that it refers only to the displayed image elements once they are activated / enabled for selection. According to the description a selection field can be excluded from selection but remain visible and might be selectable at a later moment of the selection process (see the description, page 4, lines 14 to 20; page 25, lines 11 to 17). Therefore, a selection field being disabled remains a selection field but presents at that moment nothing different than an image element presenting information.

## **2. Main request - admission into the proceedings**

2.1 The main request was submitted for the first time with the statement setting out the grounds of appeal. It is essentially based on a request which was submitted during the first instance proceedings, namely the request submitted on 1 October 2014, and subsequently withdrawn in the course of the first instance proceedings.

2.2 Claim 1 of the main request is amended compared to claim 1 of the withdrawn request mentioned above as follows (added features are indicated underlined, deleted features are struck through): "... which enables a user by means of designations of selection

fields displayed as image elements shown on the display panel ...".

- 2.3 The appellant was unable to put forward any convincing argument as to why this now slightly amended request, which does not involve any substantial technical change of the claimed subject-matter, was not filed during the first instance proceedings, e.g. to replace the withdrawn request mentioned above. According to the appellant, the amendment mentioned under point 2.2 above was a clarification of the term "image element" which could have been misunderstood compared to "selection element". The latter term did not only relate to the presentation of information but concerned an element on the display which was also touch-sensitive. The Board, however, does not share this interpretation of "selection elements" (see above, point 1.2). Apart from the fact that these amendments do not result in any substantial technical change with respect to the claimed subject-matter, they could and should have been filed during the first instance proceedings, e.g. to replace the withdrawn request on which it is essentially based. Therefore, the Board concludes that this request could and should have been filed during the first instance proceedings.
- 2.4 As already indicated under point 2.3 above, the Board considers that the amendments now submitted neither substantially change the claimed subject-matter compared to what was claimed in the withdrawn request nor can they be regarded as a legitimate reaction to the examining division's decision.
- 2.5 In view of the above the Board does not admit the main request into the proceedings under Article 12(4) RPBA 2007.

**3. First auxiliary request - inventive step**

3.1 Closest prior art

Document D1 is considered the closest prior art. This was not disputed by the appellant. It shows a beverage preparing machine including a touch screen.

More precisely, document D1 shows a control unit (10) for an automatic device for preparing a beverage (page 1, first paragraph), which control unit (10) is provided with a display panel (Figures 1 to 3B) and an input means (Figures 3A and 3B) which enables a user by means of designations of selection fields displayed as image elements on the display panel to choose from a plurality of formulations a formulation for the beverage to be prepared (Figure 3A), wherein the control unit is provided furthermore with an operating unit (this is necessarily present, hence implicitly disclosed) for displaying by means of the display panel (touch screen, see page 10, penultimate paragraph, "Berührungsbildschirm") a visually observable reaction to designations provided by the user (see page 15, first sentence of the fourth paragraph), and for controlling a preparation unit of the automatic device (implicit), with an operating condition in which the display panel has mutually hierarchically interrelated selection fields which are representative of a formulation of the beverage to be prepared (the hierarchy is derivable from the switching from the touch screen display shown in Figures 3A or 3B to the display of Figures 4, 5 or 6), with at least one selection field of a first, highest, level (Figures 3A and 3B) and at least two selection fields of a second, lower, level (Figure 6A, left "KAFFEE" and right

"MILCH"), wherein each lower ranked selection field is representative of a further specification of the formulation specified by the associated higher ranked selection field, and wherein the display panel after designation of a selection field (Figures 3A or 3B) displays the designated selection field's directly lower ranked selection fields (Figure 6A to 6C) associated with the designated selection field (the designated selection is shown in the middle of Figures 6A to 6C).

### 3.2 Differentiating features

The subject-matter defined in claim 1 differs from the teaching of document D1 by the features defined in the characterising portion, namely that the display panel after designation of a selection field continues to display the associated higher level selection fields as well, therewith expanding the depicted image further after each selection until a final composition has been reached. In other words, the display panel displays the entire hierarchical tree of the effected selection until a final selection by the user is reached.

### 3.3 Technical effect and objective technical problem to be solved

#### 3.3.1 The differentiating features are non-technical features since they relate to the presentation of information. According to the problem-solution-approach as established by the Boards of Appeal for subject-matter consisting of a mixture of technical and non-technical features, the aim achieved by the differentiating non-technical features may legitimately appear in the formulation of the problem as part of the framework of

the technical problem that is to be solved, in particular as a constraint that is to be met (*Case Law of the Boards of Appeal*, 9th Edition, 2019, I.D.9.1.3 b) and 9.1.4).

- 3.3.2 The appellant contested that the disputed feature related to the presentation of information since the selection fields were and remained touch sensitive, thereby being a technical feature. However, the Board is of the opinion that claim 1 of the first auxiliary request does not define any enabling or disabling of the selection fields but only the presentation of the selection tree (see point 1.2 above). Therefore, the wording of claim 1 relates only to the display of information, i.e. the presentation of the selection tree, without any further technical conditions being attached to the selection tree. Thus, the presentation of the selection tree as defined in claim 1 is a non-technical feature, which can be included in the formulation of the technical problem to be solved.
- 3.3.3 Based on these consideration, the problem to be solved is the implementation of the desired presentation according to the designer's instructions. In particular, according to these instructions the entire selection tree should be presented to the user in order to inform it about the selected ingredients.
- 3.4 Obviousness
- 3.4.1 The solution to the above mentioned problem is obvious to the skilled person, since the implementation of the presentation of the entire selection tree does not confront the skilled person, i.e. the software programmer, with any technical difficulty. The solution does not provide any further technical effect, either.

Therefore, no inventive step can be based on the differentiating features.

- 3.4.2 The appellant argued that document D1 showed the starting point for the argumentation in Figures 3A or 3B by the display showing the basic beverage. After having chosen the basic beverage, the next step is shown on a separate screen as shown in Figures 4A to 4C or Figures 6A to 6C. According to the appellant it was not obvious for the skilled person to present the entire selection tree, i.e. a representation of the user's complete selection, on a single screen. However, the choice of what information should be presented to the user is within the realm of the designer. As indicated above, this choice is presented to the skilled person as a constraint that is to be met.

The appellant further argued that it was even less obvious to keep the selected selection fields controllable, i.e. touch-sensitive. However, the Board is of the opinion that this is not defined in the present wording of claim 1 of the first auxiliary request.

- 3.4.3 Therefore, the Board concludes that the subject-matter defined in claim 1 of the first auxiliary request does not involve an inventive step based on the teaching of document D1 in combination with the skilled person's common general knowledge (Article 52(1) EPC in combination with Article 56 EPC).

#### **4. Second auxiliary request - amendments**

- 4.1 Claim 1 of the second auxiliary request contains the following feature: "*the control unit causes the display panel after designation of the selection field ... to*



*continue enabling the user to designate said associated higher level selection fields".*

- 4.2 According to the appellant these amendments have their basis in original claims 1 and 2, the description, page 8, lines 12 to 16, and the embodiment shown in Figures 9A to 9C and 10, and described on page 25, lines 11 to 17. In particular, Figure 10 provided the necessary basis that all associated higher level selection fields remained enabled.
- 4.3 The Board could not find a direct and unambiguous disclosure that all associated higher level selection fields remained unconditionally enabled for selection by the user.
- 4.3.1 The general disclosure presented in the description, page 3, lines 12 to 17, describes the possibility to go back to the initial selection field referring to the initial type of beverage (i.e. hot water, coffee, hot chocolate etc.).

However, for more than three hierarchical levels, no disclosure could be found in the original application documents disclosing directly and unambiguously which of the higher level selection fields remain enabled for selection, in particular if it would be all selection fields, only the immediately higher selection field of the current selection field, or the starting selection field. Therefore, no direct and unambiguous disclosure could be found for the amended generalisation.

- 4.3.2 The specification in the description, page 8, lines 12 to 16, refers to the representation of the extended tree on the display. However, from this passage of the description, no information can be derived about which

selection fields are activated or deactivated for designation by the user. The same applies to the disclosure of Figure 10 and the related passage of the description, page 25, lines 18 to 21, which only refers to the representation of the selection tree on the display. Nothing can be deduced about the activation / deactivation of the displayed selection fields. These passages only refer to the display of information.

- 4.3.3 The only specific disclosure relating to the conditions for enabling / disabling of the selection fields is given in the embodiment of Figures 9A to 9C and the related description, page 25, lines 11 to 17.

However, this embodiment is limited to only three hierarchical levels, whereas the subject-matter of claim 1 is extended to an indefinite number of hierarchical levels. Therefore, the wording of claim 1 is undoubtedly a generalisation of the embodiment shown in Figures 9A to 9C.

According to Figures 9A to 9C, the rectangles presented with the dotted lines are hidden and excluded from selection, whereas the rectangles represented with bold lines are selectable. In Figure 9C, the user has selected selection field 83 and can now choose among the selection fields presented by bold lines, hence the selection fields 8, 831, 832, or 833, whereby the selection field 8 refers to the initial starting point. Therefore, Figure 9C discloses that, when the user arrives at the final selection possibility (to select between fields 831, 832 and 833), it has, instead of selecting one of these final selections 831, 832 or 833, the possibility to go back to the starting field showing the basic beverage selection (selection field 8). In particular, the description, page 25,

lines 14 to 17, teaches that excluded selection fields (the ones in the non-selected branches) can be made accessible "by designating the hierarchically higher level selection field 8" (highlighting by the Board). This disclosure is however not sufficient for deriving that all associated higher levels remain enabled for selection. Whether all associated higher levels are "displayed" or "displayed and activated" should not be mixed up. It is possible that the selection fields can be displayed without being activated and their activation is not automatically implied by the display of a selection field.

4.3.4 Therefore, no basis could be found to provide the necessary direct and unambiguous disclosure for the amended wording of claim 1 that a plurality of higher hierarchical selection fields remain enabled.

4.4 Thus, the Board concludes that the subject-matter of claim 1 of the second auxiliary request cannot be directly and unambiguously derived from the application as filed. Therefore, claim 1 of the second auxiliary request does not fulfil the requirements of Article 123(2) EPC.

## **5. Third auxiliary request - amendments**

5.1 The amendment of claim 1 of the third auxiliary request limits the possibilities of enabled selection fields to just the immediate higher and lower levels compared to the current selection field (see the last part of the characterizing feature in point VII. above). This also represents a generalisation of the specific disclosure in relation to the embodiment of Figures 9A to 9C and 10.

5.2 Concerning this amendment, the appellant referred to the same passages in the original application documents as for the second auxiliary request. Similar to the second auxiliary request, the arguments relating to the unallowable generalisation from the three level hierarchy to an indefinite number of hierarchical levels also apply to this request. In particular, the description of the embodiment of Figures 9A to 9C (page 25, lines 11 to 17), which is the only passage indicating conditions of enabling and disabling the selection fields, does not directly and unambiguously disclose the claimed subject-matter, i.e. does not provide a basis for a generalisation to an indefinite number of hierarchical levels.

5.3 Consequently, the subject-matter defined in claim 1 of the third auxiliary request does not fulfil the requirements of Article 123(2) EPC.

## **6. Conclusion**

Since the main request is not admitted into the proceedings, the subject-matter defined in claim 1 of the first auxiliary request does not involve an inventive step, and the subject-matter defined in claim 1 of the second and third auxiliary requests extends beyond the content of the application as filed, none of the requests succeeds and the appeal must fail.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated