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**Datasheet for the decision  
of 10 June 2025**

**Case Number:** T 1043/23 - 3.2.04

**Application Number:** 19158766.6

**Publication Number:** 3530153

**IPC:** A47J31/06, A47J31/36,  
B65D85/804

**Language of the proceedings:** EN

**Title of invention:**

PRE-PACKED CHARGE OF EDIBLE POWDER MATERIAL, AND BEVERAGE  
PREPARATION SYSTEM USING SAID CHARGE

**Patent Proprietor:**

Caffé Pascucci Torrefazione S.P.A.

**Opponents:**

Wilson Gunn  
Varden Process Pty Ltd

**Headword:**

**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

Claims - product-by-process claims  
Clarity (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1043/23 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 10 June 2025**

**Appellant:** Caffé Pascucci Torrefazione S.P.A.  
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**Respondent:** Wilson Gunn  
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**Respondent:** Varden Process Pty Ltd  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 3 April 2023  
revoking European patent No. 3530153 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**           A. Pieracci  
**Members:**         G. Martin Gonzalez  
                      T. Bokor

## **Summary of Facts and Submissions**

- I. The proprietor appeals the decision of the opposition division to revoke their patent.
- II. The division held inter alia that all requests before it - an amended main request and auxiliary requests 1 and 2, the latter filed during the oral proceedings and admitted - contained added subject-matter.
- III. In preparation for oral proceedings originally scheduled for 11 June 2025, the Board issued a communication setting out its provisional opinion on the relevant issues.
- IV. With letter of 2 June 2025 the appellant proprietor withdrew their request for oral proceedings. They indicated that they would not attend the oral proceedings and requested a decision in writing based on the documents on file. The Board subsequently cancelled the oral proceedings.
- V. The appellant proprietor requests that the decision be set aside and the patent maintained according to a main request filed with letter of 5 July 2024, or according to auxiliary requests 1-4, filed with the grounds of appeal.

The respondent opponent 1 requests dismissal of the proprietor's appeal.

The respondent opponent 2 has not reacted to the proprietor's appeal.

VI. Independent claim 1 of the requests relevant to this appeal reads as follows:

(a) Main request

"Prepackaged charge (10) of edible powder material for the use in a system for the preparation of hot beverages, comprising a container body, provided with a truncated cone-shaped side wall (11) which at the open end of the container body is provided with a protruding radial flange (12), on which a closing wall (13) is located, while at the opposite end is provided a back wall (14) integral to the side wall (11), made of paper or cardboard obtained from the processing of vegetable fiber pulp derive [sic] from seasonal crops obtained from scraps of primary processing of seasonal crops as sugar cane, rice, cotton, hemp, bamboo or the like, the content of lignin in the said vegetable fiber pulp being less than 5%, characterized in that the container body is made by cold molding and subsequently formed with steam under pressure so as an outer face of the walls of the said container body is continuous and compact, the inner face being discontinuous and wrinkled, and in that the walls of the said container body are able to act as a filter upon use."

(b) First auxiliary request

Claim 1 as in the main request with the following amendments (emphasis by the Board to indicate amendment):

"...body is made by cold molding and subsequently formed with steam under pressure so as another ~~outer~~ face of the walls of the said container body is

continuous and compact, the inner face being discontinuous and wrinkled, and in that the walls of the said container body are able to act as a filter upon use and the thickness of the bottom wall of the container body is between 0.6 and 1.2 mm, and the container body has a weight/surface ratio between 150 and 450 g/m<sup>2</sup>."

(c) Second auxiliary request

Claim 1 as in the main request with the following amendments (emphasis by the Board to indicate amendment):

"Prepackaged charge (10) of ~~edible~~ coffee powder ~~material~~ for the use in a system for the preparation...

...body is made by cold molding and subsequently formed with steam under pressure so as another ~~outer~~ face of the walls of the said container body..."

(d) Third auxiliary request

Claim 1 as in the second auxiliary request with the following amendments (emphasis by the Board to indicate amendment):

"...provided a back wall (14) integral to the side wall (11), made of sugar-cane paper of a thickness of about 0.8 mm and approximately 350 g/m<sup>2</sup> obtained from the processing of vegetable fiber pulp derive from seasonal crops obtained from scraps of primary processing of seasonal crops ~~as sugar cane, rice, cotton, hemp, bamboo or the like,~~ the content of lignin..."

(e) Fourth auxiliary request

"Hot beverage preparation system comprising a pre-packaged charge of edible powder material, and an infusion assembly adapted to cooperate with said pre-packaged charge, wherein the pre-packaged charge comprise a container body provided with a truncated cone-shaped side wall, which at the open end is provided with a protruding radial flange, on which the closing wall (13) is located, while at the opposite end is provided the back wall (14), the container body being made of paper or cardboard obtained from the processing of vegetable fiber pulp derived from seasonal crops obtained from scraps of primary processing of seasonal crops as sugar cane, rice, cotton, hemp, bamboo or the like, the content of lignin in the said vegetable fiber pulp being less than 5%, the container body being made by cold molding, and subsequently formed with steam under pressure, so as one face of the walls of the said container body is continuous and compact, the other face being discontinuous and wrinkled, and wherein said infusion assembly comprises an infusion chamber whose bottom wall is provided with a plurality of ducts communicating with the dispensing means, each of said ducts being arranged in correspondence with a relief or recess able to cause a plastic deformation of the bottom wall of the container body of the pre-packed charge without causing it to break."

VII. The parties' arguments relevant to the decision are discussed in detail in the Reasons for the Decision.

## **Reasons for the Decision**

1. The invention concerns a pre-packaged charge of edible powder material and a system for beverage preparation using this pre-packaged charge (patent specification, paragraph 0001). It aims to mitigate the environmental impact of disposable beverage preparation systems, particularly those employing non-biodegradable materials, while ensuring the delivery of an infusion with high organoleptic qualities (see paragraphs 0002-0009). The container body of the pre-packaged charge is constructed from vegetable fiber pulp with less than 5% lignin content, derived from seasonal crops such as sugar cane, rice, cotton, hemp, and bamboo (see paragraph 0010). This material is compostable, structurally robust, and environmentally friendly. The container body is made by cold molding and steam treatment under pressure, which enhances its waterproof properties and prevents oil migration from the coffee powder (see paragraph 0011).
  
2. Violation of the right to be heard
  - 2.1 The appellant submits that the opposition division did not guarantee a fair and balanced procedure for the patentee, violating their right to be heard. As a consequence, the proceedings before the opposition division were tainted with a fundamental procedural violation.

2.2 The Board in its preliminary opinion set out its provisional view on this issue as follows:

*"4 Violation of the right to be heard*

*4.1 Regardless of the question of the objection's admissibility, as contested in the opponent's reply dated 15 December 2023, section 3.6, the Board finds no evidence of procedural violations concerning equal treatment or fair hearing rights in the opposition proceedings (see appellant's grounds section I and letter of 5 July 2024; and respondent's letters of 15 December 2023 and of 5 May 20 November 2024, section 3 in both letters).*

*In opposition proceedings, the right to be heard is fundamentally linked to the principle of equal treatment: no party should receive preferential treatment in terms of the frequency with which it may present its case, either orally or in writing, see Case Law of the Boards of Appeal, 2022, 10th edition (CLB) IV.C.6.1. There is no evidence, nor has the appellant alleged, that the division impeded their ability to present their case in an equal manner to the opponents.*

*4.2 The appellant's claim seems to originate solely from a subjective impression of bias based on their interpretation of the division's preliminary opinion.*

*4.3 The appellant claims that the opposition division's preliminary opinion did not contain an independent analysis of the case and was biased towards the opponents' views, particularly regarding the interpretation of prior art documents D1, D2, D7-13, D16, and D22. They argue this bias suggests*

*insufficient preparation by the division and a lack of understanding of the full case for an informed decision.*

*4.4 However, objectively viewed, the division's preliminary opinion demonstrates a reasoned approach, reflecting thorough analysis and assessment of the parties' arguments, including certain noted disagreements with the opponents, see sections 6.3.4, 7.6, 7.13, and 7.15. Regarding novelty and the alleged lack of analysis of documents D1, D2, D7-13, D16, and D22, the division appears to have carefully considered the appellant's arguments, focusing on what the division deemed to be the main issue for novelty - the interpretation of the feature that the container walls act as a filter, as detailed in section 8.2. This is seen to focus the direction for the discussion in the upcoming oral proceedings. An in-depth analysis of each document at this preliminary stage does not appear necessary. The division also justifies why a preliminary inventive step analysis is not necessary (section 9). Objectively, these aspects of the division's approach fail to support the appellant's claims of bias, lack of independent analysis or unequal treatment.*

*4.5 In conclusion, the Board sees no evidence that would support the proprietor's allegations that the proceedings before the opposition division were not conducted with the impartiality and thorough examination that is required by the EPC and established EPO guidelines."*

2.3 After reviewing its preliminary opinion and absent further submissions from the parties, the Board sees no reason to change its preliminary view and concludes that the opposition division did not commit a substantial procedural violation.

3. All requests - Clarity

3.1 The respondent-opponent argues that all of the proprietor's requests lack clarity. The Board set out its preliminary opinion in its written communication as follows:

"7 *New main request (5 July 2024) - Clarity*

7.1 *The inclusion of product-by-process features in claim 1, specifying that the paper or cardboard is derived from vegetable fiber pulp obtained from scraps of primary processing of seasonal crops, makes its subject-matter unclear, Article 84 EPC (see respondent opponent 1's letter of 15 December 2023, sections 5.1-5.3).*

7.2 *These features describe the container body material by its method of manufacture. As variously emphasized in the case law (see Case Law of the Boards of Appeal, 2022 10th edition (CLBA), II.A.7.1, last paragraph), for such claims the requirement of clarity means that the skilled person should be able to determine which identifiable and unambiguous technical features are imparted to the product by the process by which it is defined. In this instance, it remains unclear whether the skilled person can determine or identify in the final product whether it was made from scraps or another vegetable fiber source, much less*

*ascertain if the scraps are from one specific primary process or another type of process.*

*7.3 Additionally, the claim attempts to define a material using terms whose scope and definition are inherently vague. The interpretation of 'primary processing' and 'scraps' may vary depending on the main product derived from the crop and on subjective considerations, leading to inconsistencies in their definition and the classification of the derived material.*

*7.4 Compliance of claim 7 with Article 84 EPC may also be discussed.*

#### *8 Auxiliary requests - Clarity*

*Claim 1 of all auxiliary requests incorporates the features analysed above for the main request and, for the same reasons, fails to meet the requirements of clarity under Article 84 EPC."*

- 3.2 After reviewing its preliminary opinion and considering the absence of further submissions from the parties, the Board finds no reason for revising its initial assessment. Accordingly, it concludes that the appellant proprietor's main request, submitted with letter of 5 July 2024, and auxiliary requests 1-4 filed earlier with the grounds of appeal, do not meet the requirements of clarity under Article 84 EPC.

The appellant's new main request of 5 July 2024 amends claim 1 by changing "another" to "an outer," aligning the wording with the original disclosure (page 18, lines 19-20) and correcting an apparent typographical error. Although auxiliary requests 1-4 also contained

this error, no corrected versions were submitted on 5 July 2024. The lack of clarity conclusion for auxiliary requests 1-4 remains valid, regardless of whether the correction was also intended for these requests.

Accordingly, the Board concludes that all of the proprietor's requests fail to meet the requirements of clarity under Article 84 EPC.

4. All of the proprietor's requests fail. Consequently, the proprietor's appeal must be dismissed.

**Order**

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

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated