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**Datasheet for the decision
of 16 September 2025**

Case Number: T 1350/23 - 3.2.04

Application Number: 14730191.5

Publication Number: 2996966

IPC: B65D85/804

Language of the proceedings: EN

Title of invention:

A BEVERAGE PREPARATION SYSTEM, A CAPSULE AND A METHOD FOR
FORMING A BEVERAGE

Patent Proprietor:

Koninklijke Douwe Egberts B.V.

Opponents:

Delica AG
Société des Produits Nestlé S.A.

Headword:

Relevant legal provisions:

EPC Art. 54(2), 56
RPBA 2020 Art. 12(2), 12(6)

Keyword:

Novelty - (yes)

Inventive step - (yes)

Late-filed objection - should have been submitted in first-
instance proceedings (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1350/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 16 September 2025

Appellant: Société des Produits Nestlé S.A.
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Respondent: Koninklijke Douwe Egberts B.V.
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Party as of right: Delica AG
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 May 2023 concerning maintenance of the
European Patent No. 2996966 in amended form.

Composition of the Board:

Chairman A. Pieracci
Members: G. Martin Gonzalez
 K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeal was filed by the opponent 2 against the interlocutory decision of the opposition division to maintain the patent in amended form.

Opponent 1 withdrew its opposition with letter of 3 April 2025.

- II. The opposition division held that an amended main request filed on 5 January 2023 was sufficiently disclosed, new over D1, D4, D6 and D8 and involved an inventive step having regard at D6, D4 and common general knowledge.

- III. In preparation for oral proceedings the board issued a communication setting out its provisional opinion on the relevant issues.

Oral proceedings before the Board were held by videoconference on 16 September 2025.

- IV. The appellant (opponent 2) requests that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requests that the appeal be dismissed or that the decision under appeal be set aside and the patent be maintained according to one of auxiliary requests 1 to 6 filed with the reply of 26 January 2024.

V. Independent claim 1 of the main request (as maintained by the opposition division) reads as follows:

"A beverage producing system comprising:
a capsule (1) containing beverage ingredients;
and
a beverage preparation machine;
the capsule (1) comprising a cup-shaped body (40) and a lid (41); the cup-shaped body (40) having a base (42) and a side wall (43) and the lid (41) being sealed to the cup-shaped body (40);
the capsule (1) being designed for insertion into the beverage preparation machine to permit a pressurised liquid to be flowed through the capsule (1) in order to produce a beverage from interaction with the beverage ingredients;
the beverage preparation machine having an enclosing member (2) adapted to be selectively movable between an open position to permit insertion of the capsule (1) into the beverage preparation machine and a closed position in which the enclosing member (2) sealingly engages the capsule (1);
characterized in that
the side wall (43) is dimensioned to be contacted by the enclosing member (2) on movement of the enclosing member (2) into the closed position to buckle the side wall (43) to form a valley zone (51) bridging the enclosing member (2);
wherein the side wall (43) is adapted such that said valley zone (51) forms at least one sealing interface between the enclosing member (2) and the side wall (43),
wherein the cup-shaped body (40) is formed from aluminium or an aluminium alloy,
wherein the side wall (43) is adapted to undergo plastic deformation during said buckling."

VI. In the present decision, reference is made to the following documents:

- (D1) EP 1 654 966 A1
- (D4) EP 2 284 101 A1
- (D6) ES 1 078 818 U (D6a's priority document)
- (D6a) EP 2 960 181 A1
- (D8) WO 2010/116284 A2

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

Reasons for the Decision

1. Background

The invention relates to a beverage preparation system that includes a capsule designed for use in a beverage preparation machine, see patent specification para 0001. The side wall of the capsule is designed to buckle, forming a valley zone that creates sealing interfaces. The sealing interface is formed between the enclosing member of the machine and the capsule's side wall, see para 0006. The invention provides a capsule which may be used as part of known beverage preparation systems, is economical to produce and provides effective sealing in use, see para 0003.

2. Main request - Novelty

2.1 The appellant challenges the conclusions of the opposition division that upheld claim 1 is novel over D1, D4 and D6/D6a.

2.2 However, the appellant's arguments do not convince the board that any of these documents disclose the claimed combination of a capsule side wall formed from aluminium or aluminium alloy and adapted to undergo plastic deformation.

2.3 Regarding D1, plastic deformation is not mentioned anywhere in the document. D1 consistently teaches that sealing relies on resilience, typically rubber-elastic (see paras. [0015], [0018], [0021], [0022], [0046], [0049]), and describes deformation as biasing, deflection or compression (see [0022], [0051], [0059]), all of which imply elasticity. The novelty objection regarding D1, is based only on the particular embodiment depicted on Figs. 10-12, and described in paragraphs [0064]-[0067]. However, paragraph [0064] expressly teaches resilient deformation (which is necessarily elastic), not plastic, consistently with the whole disclosure of D1. The appellant's submission that paragraphs [0049] and [0050] support the idea that the term "resilient" in D1 may include plastic deformation is not convincing. Paragraph [0050] refers to the pre-formed bent lip before insertion into the machine, not to deformation during closure.

The appellant also relies on the phrase "resilient or at least deformable" in paragraph [0064]. This does not amount to an unambiguous disclosure of plastic deformation. Resilient and elastic are not synonymous, and "at least deformable" may simply refer to situations of low resiliency - i.e. limited capacity to spring back - without implying permanent deformation. It therefore cannot be read as an unambiguous disclosure of plastic deformation. The same conclusion follows when considered with paragraph [0065], which

describes only further modes of resilient deformation, including deflection, compression or displacement.

The further argument that the skilled person would infer plastic deformation from the extent of deformation of the material shown in Fig. 12 is inconsistent with the explicit description in [0064], which defines the embodiment as resilient by geometry, and thus also not convincing. The further argument that D1 does not exclude plastic deformation is not relevant; what matters is what is directly and unambiguously disclosed, namely resilient behaviour (elastic in nature).

- 2.4 As regards D4, paragraph [0032] mentions aluminium as a possible capsule body or capsule rim material, but not in connection with plastic deformation and also not in connection with the sealing member. D4 treats the capsule body, rim and sealing member as separate elements (see claim 1). Paragraph [0020] allows the sealing member to be of the same material as the body or rim, but without specifying which material. Paragraphs [0044] and [0045] mention plastic deformation as a secondary option, but also without specifying a material. The passages on aluminium ([0032]) and plastic deformation ([0044], [0045]) are isolated and not linked. The overall teaching remains rubber-elastic sealing, see paragraphs [0019], [0020]. The further argument of the opponent that when the capsule is made of aluminium this will necessarily deform plastically is not convincing as it remains unsubstantiated. Thus, D4 does not directly and unambiguously disclose the combination of plastic deformation of an aluminium capsule wall.

2.5 With respect to D6/D6a, only Fig. 14 is potentially relevant. While paragraphs [0044] and [0045] mention plastic deformation of the ridges 34, the general teaching is elastic deformation of the sealing member (see [0015]), and there is no disclosure that Fig. 14 is made of aluminium. The opponent relied on cross-references in [0044] and [0035] linking Fig. 14 to earlier embodiments. Yet paragraph [0036] specifies plastics for Figs. 5-8, and paragraph [0029] mentions aluminium only for Figs. 3-4, and then as a secondary option after detailed disclosure of plastics. Moreover, the cross-reference to Figs. 3-4 concerns structural similarity, not material choice. Taken together, these passages do not amount to a direct and unambiguous disclosure of aluminium for Fig. 14. Finally, as the respondent convincingly argued during the oral proceedings, the design of Fig. 14 - with variable wall thickness, ridges 34 and skirt 22 - is incompatible with sheet-like aluminium manufacture and uneconomic for mass production, so the skilled person would understand this embodiment to be directed to plastics.

2.6 The board thus concludes that claim 1 of the main request is new over the cited prior art.

3. Main request - Inventive step

3.1 The appellant objects lack of inventive step of upheld claim 1 starting from D4, D6/D6a or D8.

3.2 The objection based on D6/D6a in combination with common general knowledge is unconvincing. Fig. 14 is the only embodiment in which plastic deformation is mentioned (paragraphs [0044], [0045]); the general teaching of D6/D6a is elastic deformation (see paragraph [0015]). As concluded above for novelty, the

document does not disclose that Fig. 14 is made of aluminium, and its design - with varying wall thickness, ridges 34 and integral skirt 22 - is incompatible with sheet-based aluminium manufacture in the sense that it is uneconomic for mass production. The skilled person would therefore have no incentive to adopt such a design for aluminium capsules.

Paragraph [0019], cited by the appellant opponent, refers only to the embodiments of the type shown in Fig. 13, which lacks ridges and has a separate ring 22 (instead of skirt 22 of Fig. 14 integral with the capsule wall), making it suitable for sheet materials; this teaching does not extend to Fig. 14. The fact that D6/D6a refers to embodiments like that of Fig. 13 as appropriate for sheet-like material (see paragraph [0019]), but refrains from it for embodiments of the type of Fig. 14 or any other kind, confirms this distinction.

Finally, the appellant argued that Fig. 14 could nevertheless be manufactured in aluminium by controlled deep drawing and subsequent machining. This is not persuasive. The additional steps render such manufacture uneconomic for mass production. Inventive step is assessed on what the skilled person would do as an obvious measure, not on what is technically possible.

- 3.3 The board did not admit the further inventive-step objections starting from D4 and D8 under Article 12(6) RPBA. Pursuant to Article 12(6) RPBA, objections that should have been submitted in the proceedings leading to the decision under appeal shall not be admitted, unless the circumstances of the appeal case justify their admittance.

The inventive-step objections starting from D4 and D8 were raised for the first time on appeal. The appellant argued that, since novelty objections based on D4 and D8 had already been pursued before the opposition division, it might have seemed contradictory to also raise inventive-step objections at that stage. The board is not persuaded. After the opposition division found the subject-matter novel over D4 and D8 (see point 6.3.7 of the minutes), the opponent could and should have raised inventive-step objections at least during the oral proceedings to give the other party the opportunity to react to it and allow the opposition division to decide on the matter, whereby the board would now be in the position of reviewing the corresponding decision in a judicial manner (Article 12(2) RPBA). The opponent were expressly given a break to reassess their case (see point 6.4.2 of the minutes), yet chose to proceed only with attacks starting from D6. The board considers thus appropriate not to admit the above objections into the appeal proceedings pursuant to Article 12(6) RPBA.

The appellant further relied on **T 184/17**, reasons 4.2, arguing that, as in that case, the new inventive-step objections here rely on the same passages and teachings as the unsuccessful novelty objections, and therefore remain within the same factual framework of the novelty objection and should be admitted. However in **T 184/17** the issue was of admittance of the fresh ground of opposition of inventive step which does not arise here, where the issue is that of admittance of inventive step objections raised for the first time with the statement setting out the grounds of appeal, where the corresponding ground had already been raised in opposition.

Furthermore, this argument, supports rather than undermines the board's conclusion: if the objections relied on the same passages as the novelty attacks, they should have been apparent to the opponent and raised at the earliest opportunity, namely before the opposition division after the failure of those novelty attacks.

Moreover the cited decision is not pertinent to the present case, since it does not concern the exercise of discretion under the RPBA and, in particular, not the application of Article 12(6) RPBA and moreover this decision has been taken before entering into force of the present rules of procedure.

- 3.4 In conclusion, the appellant's inventive step objections are either not convincing or not admitted by the board.
4. As all the objections raised by the appellant opponent fail or are deemed inadmissible, the board confirms the decision of the opposition division.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated